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Guidelines on Appointment and Tenure: the C.A.U.T.'s or the A.U.C.C.'s ?

The Role of the University President in Dismissal Procedures

The Milner Memorial Award

Professor-Power and some of its Consequences

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Bruce Dunlop

GUIDELINES on APPOINTMENT and TENURE: the C.A.U.T.'s or the A.U.C.C.'s?

Professor J. B. Dunlop is a Full Professor of Law, University of Toronto. He succeeded the late Professor J. Milner as chairman of the A.F. & T. Committee during 1969-1970. Involved in the joint discussions about the A.U.C.C. Guidelines on University Organization, *he is sharing in this article his personal views concerning this document.*

When the C.A.U.T. published its policy statement on academic appointments and tenure following its adoption by Council in November, 1967, the reaction in some quarters was that the Association had behaved rather highhandedly in making a unilateral declaration of teachers' rights in the modern university. The implication was that there is more to universities than university teachers; that teachers alone should not purport to determine how universities ought to function; and that especially a national association of teachers ought not to dictate to individual universities across Canada because this would fail to take account of "individual, institutional, provincial, or regional attitudes or traditions" and would ignore "variations in size of the universities and Colleges of Canada, all of which have a

bearing on both the instruments of university government, and their complexity." [1]

It must be admitted at once that there is more to universities than university teachers and that teachers cannot and should not wish to have the sole right to determine how universities ought to function. Nothing to the contrary was implied by the adoption and publication of the Association's guidelines. [2] They simply recognized that definitions of academic freedom and tenure and the procedures for determining when and how appointments should be made and terminated and tenure granted were by and large inadequate. This has more recently been recognized by the Association of Universities and Colleges of Canada which published, in March of 1970, a set of *Guidelines on University Organization*, [3] including a section on academic appointments, promotions, tenure and dismissal. The C.A.U.T. publication also recognized that one of the better ways to promote the adoption of adequate procedures is to recommend a particular set of procedures and to press for their adoption. That they might not be the last word in appointment, dismissal and tenure regulations was appreciated and comment on them was invited. So far, the only systematic response has been the A.U.C.C. guidelines.

Prior to the publication of the A.U.C.C. document representatives of the two organizations met to discuss the issues involved. While agreement on many points was reached, it was not possible to produce a commonly approved document because several fundamental differences of opinion remained. This is hardly surprising. The viewpoints of the two organizations differ. Notwithstanding that both have the best interests of the university community at large at heart, a body representing teachers and an organization comprised primarily of senior administrators can hardly be expected to see eye to eye on all fundamental issues. Much as their interests may overlap, there are inevitable and significant differences. It is for this reason that the C.A.U.T. must never lose sight of its primary purpose: "to promote the interests of teachers and researchers in Canadian universities and colleges." [4] If these interests are legitimate universities will not suffer thereby. To the extent that they are not, no doubt they will be successfully resisted. At least that is the way of a successful society. But no one else will promote them as well as we ourselves.

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1. These words, which sum up the problem of uniform guidelines, are taken from the A.U.C.C.'s guidelines dated 1 February, 1970 and published in **University Affairs**, Vol. 11, No. 3, in March. The A.U.C.C. document does not, however, expressly criticize the C.A.U.T. guidelines in the manner indicated in the text.
2. Published in the **C.A.U.T. Bulletin**, Vol. 16, No. 3, February 1968 and amended in 1969 and 1970. See **C.A.U.T. Bulletin**, Vol. 18, No. 2, at p. 12, and Vol. 18, No. 4, at p. 66.
3. **University Affairs**, Vol. 11,, No. 3, March 1970, published by the Association of Universities and Colleges of Canada. (The French version is entitled : Directives sur l'organisation universitaire. Ed.)
4. C.A.U.T. Constitution, published in the **C.A.U.T. Bulletin**, Vol. 18, No. 4, Summer 1970.

The implication that the C.A.U.T. guidelines may constitute a procrustean bed is not warranted either. The important thing is that they represent a point of view as to minimal, fundamental safeguards of academic freedom that transcend institutional, geographical and cultural differences. In other words, in the C.A.U.T.'s opinion, if local circumstances dictate departure from the fundamental principles expressed in its guidelines, local circumstances are thereby dictating inadequate protection of academic freedom. This the C.A.U.T. cannot condone, whatever the proffered justification.

While both the C.A.U.T.'s guidelines and those of the A.U.C.C. have been published and are available for comparison and choice by anyone interested in the exercise, it may perhaps be useful to offer here an explicit statement of the fundamental differences between the two.

Although the A.U.C.C., after noting that "The question has been raised whether or not tenure . . . is any longer appropriate in the contemporary university," commits itself to the belief that it is "an important guarantee of academic freedom," it offers less than satisfactory guidance as to the procedures which should be adopted for determining who should have tenure and when tenure should be granted.

Like the C.A.U.T. guidelines, the A.U.C.C. document identifies three categories of appointments: the tenured position, the untenured appointment that is the usual preliminary to consideration for tenure, and what the A.U.C.C. calls an "appointment without review . . . where there is no suggestion that the appointment will be continued." The C.A.U.T. recognizes this last category but takes the view that it should be considered an exceptional type of appointment. There are times when, to fill a gap left by an unexpected resignation, to substitute for a member of a teaching staff who is on leave, or to meet some other temporary or non-recurring need it will be necessary to appoint someone for a limited term. Beyond this, however, the "appointment without review" could be used as a device for meeting regular staffing requirements to a substantial degree without the "bother" of having to consider the people involved for tenure. The A.U.C.C. document would be more reassuring if it, too, specified that such appointments should be considered exceptional. Otherwise even the most elaborate procedures for safeguarding academic freedom in other areas could be seriously undermined.

The A.U.C.C. category of "appointment with review" is akin to the C.A.U.T. "probationary" appointment, but unlike it in that the appointment with review does not clearly imply consideration for tenure. The A.U.C.C. does say that tenure "should be granted

when and as institutions are satisfied that the individual's teaching competence and scholarly quality justify it, and when curricular needs justify the continuing appointment." It also says that four years ought, generally speaking, to be "ample time for departmental and other faculty representatives to make up their minds whether or not to recommend a man or woman for tenure." Nevertheless it is possible to infer that the appointment with review could continue beyond the four-year period and that the review (which could result in termination) need not be a tenure review, although institutions should "establish procedures for review of such appointments and renewals."

Perhaps this is quibbling with wording rather than intent, but the issue is an important one. The C.A.U.T.'s view is that a decision one way or the other on tenure *must* be made within a reasonable, and specified, time and that the individual *must* either be granted tenure or have his appointment terminated. The notion that a person qualified for tenure could be kept on staff indefinitely without receiving tenure is not justifiable. Enshrined in any tenure document, it provides the basis for undermining the whole system of tenure. On the other hand the notion of an individual unqualified for tenure being kept on staff indefinitely is equally unjustifiable, on academic grounds alone, but as well because it could become a device for avoiding the granting of tenure. Thus it is the C.A.U.T.'s view that the person who fails to qualify for tenure within the specified reasonable time (be it the A.U.C.C.'s four years or the C.A.U.T.'s three to five years) ought to be terminated. This would also avoid the not unheard-of situation where an untenured appointee is terminated after ten or even fifteen years, "in his own best interests," because he simply is not good enough for the job. It would be no kindness to such a person to keep him on beyond the five-year probationary period only to terminate him at a point where his roots may be still deeper, his family obligations greater and his prospects for embarking on a new career something less than rosy.

On the matter of reviewing probationary appointments it is the C.A.U.T.'s position that every appointee in this category should within the time specified be given formal consideration for tenure. However, some universities divide the "probationary" period, or time when a teacher is under an appointment with review, into more than one contract period. The formal consideration for tenure comes at the end of the second contract period. But the appointment must also be reviewed at the end of the first contract period to determine whether or not it should be continued. In a sense, therefore, a tenure decision is being made at that point as well. The decision not to renew precludes the granting of tenure. The decision to continue the appointment effectively assures con-

sideration for tenure at the end of the second contract period. The C.A.U.T. agrees wholeheartedly that procedures for carrying out this review should be established. In fact, the C.A.U.T. sees no reason why they should not contain the same safeguards as the tenure decision properly so called.

None of these C.A.U.T. views is really inconsistent with the wording of the A.U.C.C. guidelines. On the other hand, neither does the A.U.C.C. document clearly agree with these views. The C.A.U.T. believes that an effective tenure document must spell them out and effective guidelines must urge that this be done.

Here, however, we come to the crucial point. What procedures should be used to reach a tenure decision ? On this question the A.U.C.C. guidelines are altogether too vague. They simply say that

> recommendations for appointment, promotion, tenure and dismissal generally originate within a department and then go to the dean of the faculty. They may be subject to review by an advisory committee, normally presided over by the academic vice-president, a nominee of the president or the president himself who, under most university constitutions, has the sole responsibility for making recommendations on these matters to the board.

The document then turns to the specific problem of departments that are "creating or perpetuating a general weakness or ineffectiveness within themselves." But who, within the department, originates tenure and promotion recommendations (leaving dismissal aside for the moment) ? The department chairman alone ? To the C.A.U.T. at least this form of autocracy is no longer acceptable. The department chairman after consultation ? This is less objectionable, though much will depend on the nature and extent of the consultation and the regard given to it. In the C.A.U.T.'s view, however, the judgment should be broadly based, preferably being made by elected committee. It may be appropriate to include untenured members of the department and members of cognate departments. (Needless to say, it is appropriate that the departmental chairman participate.) Such widespread consultation must minimize the risks of jugmental errors or personality conflicts affecting such crucial decisions.

Surely the C.A.U.T. view that the individual concerned should have the right to present written or oral evidence is justified too. He may, after all, be capable of making a worthwhile contribution to his own case. And it would seem difficult to deny him the right to reasons for an adverse decision if he cares to ask for them. While no one may wish to hurt his feelings (which will not be exactly unruffled in any case), yet if he is willing to run that risk

it hardly lies in the mouths of his judges to say that it is in his own best interest that he be saved from shock. In any event, he ought surely, in the event of bias or unfair procedures, to have a right of appeal which implies that he should be told the basis of the decision against him.

It cannot be said that these points are inconsistent with the A.U.C.C.'s position. If the A.U.C.C. agrees with them, however, then they should be spelled out in the guidelines in order to increase the likelihood that they will be accepted formally by member institutions. If the A.U.C.C. does not agree, it would be desirable if it would say why.

Perhaps the clearest of all differences between the C.A.U.T. and the A.U.C.C. is in the area of dismissal proceedings. Here the A.U.C.C. has spelled out its position more elaborately. The fundamental points of disagreement are two. Who should constitute the "hearing committee" and whether its decision should be binding.

The A.U.C.C. position is that the hearing committee should be internal. "Members of the institution normally have a full regard for the rights of a colleague and at the same time a more acute concern for the standards and reputation of the institution than persons from outside can have."

Whether the second branch of that argument is correct, it is clear from experience that the first branch is not. Major dismissal or termination disputes almost invariably polarize the campus on which they occur. It is difficult to find a member of the administration, the teaching staff or the student body who is unbiased in the matter. One has only to think of a few recent cases: Strax, Santhanam, Daniel, Gray, Simon Fraser P.S.A. Department. Feelings become very intense. Sometimes there is a majority feeling one way or the other. Sometimes there is a split. Perhaps on very large campuses there are parts of the university that remain relatively untouched. In an atmosphere of protest meetings, counter demonstrations, votes of no confidence in faculty association executives and so on, it is very difficult to imagine an impartial hearing committee being established internally or, what is equally important, it is very difficult to imagine the establishment of a committee that both parties to the dispute would accept as being impartial. Even the establishment of a standing committee in tranquil times does not guarantee that it will be unbiased, or accepted as unbiased, when times become stormy.

There may be a tendency to think of these as abnormal cases and that the A.U.C.C. statement that members of the institution normally have a full regard for the rights of a colleague is generally true. It is my own view, however, that every dismissal proceeding has

the potential for stirring passions, if not over the substance of the charge then over the procedures used to determine its validity. It is therefore more accurate to say that when times are tranquil the members of an institution have a full regard for the rights of their colleagues in the abstract. But in times of dispute they tend to lose the capacity for impartial judgment (an entirely human trait found among thoroughly conscientious people) and this fact should be recognized in the provision for adjudication of such contentious issues so that the substantive issue of the validity of the allegations against an individual sought to be dismissed will not be lost in a rancourous dispute over procedural matters. Thus the C.A.U.T. urges the resort to outside nominees to a hearing committee. There is no absolute guarantee of impartiality in any case where a human being must exercise judgment. But this procedure at least minimizes the risk of specific bias.

As to the concern of the A.U.C.C. over the outsider's regard for the standards and reputation of the institution, one can only answer that it is surely possible for a committee of outside academics to be comprised of responsible individuals, intelligent, knowledgeable and determined to do justice to the case. If this is not considered an adequate safeguard for the standards and reputation of the institution one can only wonder whether what is really wanted is a committee that will be willing to sacrifice the right of an individual to a fair hearing in order to protect the reputation of the institution, which does not seem to be a legitimate objective.

The binding effect of an adjudication in dismissal proceedings is a contentious issue between the C.A.U.T. and the A.U.C.C. The latter's guidelines say "It is assumed that the committee's decision would normally be accepted." I for one am doubtful whether this abstract belief, which I am sure most governing bodies would subscribe to sincerely, would stand up to the pressures of the kinds of cases so commonly to be found in this area. The individual involved in dismissal proceedings is frequently controversial and has often created a considerable climate of opinion against him on the campus, as already mentioned. Even where he has generated a certain amount of support among faculty and students he may well have alienated senior administrators and the "establishment" of the governing body. If not, then he may well have sharply divided the governing body, just as he may sharply have divided the rest of the university community. While an irked governing body may readily accept a decision against the individual it may have more trouble accepting a decision in his favour. And yet, if it is not prepared to accept such a decision the hearing becomes pointless. A divided governing body on the other hand may become embroiled in internal strife that is not beneficial to the continuing

harmony that is surely important to the successful functioning of the university. There seem to be enough strains upon tolerance already. A procedure which would remove one source of strain seems to have much to recommend it. To agree in advance, when unassailed by the vexation of a particular case, to be bound by the adjudication of a dismissal hearing would at once guarantee the individual a bias-free determination of his rights (to the extent that this is ever possible) and save the university itself — students, faculty, administrators, governors — the unproductive consequences of open strife. All will not be sweetness and light. Opinion may be divided and discussion may be disputatious. But the consequences will be less damaging and less durable.

It is sometimes argued that the governing body has the legal duty to make decisions of this nature and that this precludes turning the decision-making power over to a hearing committee. There is no legal reason, however, why the governing body cannot agree to accept the decisions of a hearing committee or arbitration board. This is simply to exercise its decision-making power by deciding how to settle certain kinds of disputes. It is not abandoning its decision-making power, it is exercising it.

These, then, are the major criticisms I would make of the A.U.C.C. guidelines and I think it fair to say that the C.A.U.T.'s views on the points raised, while they are affected by the particular viewpoint of the teacher, are not contrary to the interests of the university community at large. Tenure and promotion decisions which are broadly based to minimize the possibility of mistaken or biased judgments surely protect the university as well as the teacher. So do dismissal procedures that aim at impartiality and the reduction of potential strife. Furthermore, it is important that all these procedures be established in advance, be clearly committed to print and be of general application so that they can be clearly understood and so that disputes will not so often arise over the appropriateness of a particular method of proceeding in any particular case.

It is unfortunate that C.A.U.T. positions in these matters are often taken personally by senior administrators as indications of distrust. This, of course, is partly because the C.A.U.T. so often becomes involved in a case after a dispute has arisen and because clear procedures for resolving it fairly have not been established and accepted. In this atmosphere of antagonism it is small wonder that the issue takes on personal overtones. This, to me, is further reinforcement for the views already expressed. Apart from this, however, there seems to be a not uncommon feeling that to urge the adoption of rules that provide against extreme forms of misbehaviour or bad faith is to imply that decision-makers are all

suspect. This is not the point. The point is that some decision-makers, and this applies whether they be democratically selected or otherwise, will not measure up to the task. And, more important, all decision-makers, no matter how wise and benevolent, have feelings that can affect their judgment and can make mistakes.

To try to create safeguards against the effects of these human traits is surely not to insult them but to assist them. One may disagree with the need for, the consequences and the details of the C.A.U.T. version of proper procedures. It is to be hoped that their intent will not be misunderstood.

Finally it should be said that the C.A.U.T. welcomed the A.U.C.C.'s decision to seek to have its member institutions adopt appropriate procedures for protecting academic freedom and tenure. But the C.A.U.T. will continue to press for what it deems to be necessary improvements in such guidelines.

Honorable Justice Bora Laskin receiving the Milner Award in the presence of Mrs. J. Milner, and (from left to right) Brough Macpherson, Gordin Kaplan, Percy Smith and Alwyn Berland. *(See page 17.)*

Alwyn Berland

The ROLE of the UNIVERSITY PRESIDENT in DISMISSAL PROCEDURES

In this companion piece to Professor Dunlop's article, the Executive Secretary of the C.A.U.T. underlines the necessary distinction between the adjudicative and executive decisions in dismissal procedures.

The C.A.U.T. takes the view that only the university President, as chief executive officer, should have the power to institute dismissal proceedings against a faculty member. In dealing with appointments, recommendations for renewal of contract or for the granting of tenure, the president seeks advice and recommendations from properly constituted committees, but maintains the authority of formal recommendation to the Board. It is inconceivable, in a matter so grave as dismissal, that this responsibility should reside at another level.

The President should wish to assure himself that a recommendation to initiate dismissal procedures is sufficiently supported to justify an action that is likely to be accompanied by much publicity, and in many cases by dissension or even polarization of campus feelings and attitudes. He should wish to assure himself that more is involved in a contemplated dismissal than departmental disagreement or

personality conflicts, or local witch-hunting, whether political, ideological, or academic.

In arriving at such assurance the President is of course open to representations from departmental chairmen, from deans, from other administrative or academic bodies. He may choose to avail himself further of a safeguard provided in the *C.A.U.T. Policy Statement on Academic Appointments and Tenure.* Section C4 of the Policy Statement reads:

> When the President of the university and the Dean of the faculty concerned are satisfied that there is adequate cause to justify their recommending that a faculty member should be dismissed, the President and Dean should forthwith notify the member that they intend so to recommend, and they should invite the member to meet with them in the presence of his department head, if there is one, and a disinterested professor having tenure who is acceptable to the dean and to the member. In this and all further proceedings, the member should be permitted to bring and be assisted by an adviser of his choice.

There is nothing to prevent a President from interpreting the provisions of this section in a two-fold manner. He may wish to meet informally with the faculty member to present his charges and his evidence and to invite the faculty member to resign, and to discuss terminal arrangements (leave of absence, severance pay, etc.). He may, that is, proceed on the assumption that there are in fact already sufficient grounds for dismissal to merit a meeting which has no other function than that of offering the professor the choice between resignation or a formal dismissal hearing.

On the other hand, the president may treat this preliminary meeting as the final stage in the determination of whether there is in fact adequate cause to justify formal dismissal procedures. The meeting allows the president to hear the professor speak on his own behalf, to answer to certain charges, to explain, to present substantiating evidence of his own. Only at the end of this hearing might the president determine finally whether there is in fact a "True Bill" that warrants further action.

Either possibility has support within the C.A.U.T. guidelines. Section C5 goes on to say: "If the attempt to settle the matter fails, the president should inform the member in writing of the charges against him in sufficient detail to enable him to prepare his defense."

Which of these two uses the President makes of the preliminary hearing might depend on the nature of the charges and of the evidence. It is likely that it will depend equally on the attitudes of the President — toward openness and candour, toward his own

role as primarily executive rather than adjudicative. But regardless of which use the President makes of the preliminary hearing, the formal hearing will be the same in scope, in procedure, and in the nature of its findings.

C.A.U.T. is committed to the principle of adjudication by an independent tribunal as the fairest of dismissal proceedings. This commitment implies no lack of trust in the ability or integrity of university presidents or other executive officers. It merely implies that there is an adjudicative as well as an executive decision to be made in determining that cause for dismissal exists and that these decisions ought not to be made by the same authority.

This means, of course, that C.A.U.T. believes that a formal hearing committee named to consider whether adequate cause for dismissal exists must act as an arbitration committee; or, in the words of the C.A.U.T. guidelines, "The findings and opinion of the committee should be final and binding on the member and the university." We believe that only in this way can the findings of the hearing committee be protected against influences which properly have no bearing on the issue of dismissal. This is not to claim that the decisions of arbitrations in such cases will be infallible; there will no doubt be occasions when such decisions appear to some to be incorrect. *No* tribunal, individual or collective, may guarantee such infallibility, not even within the groves of academe. Nevertheless the findings of a properly selected arbitration committee are the least likely to be affected by considerations of person or of party, of local and irrelevant alignments between factions whether of town and gown, or faculty and administration, or within faculty groups, or of student-faculty tensions, or of those ideological strains which from time to time the Academic Freedom and Tenure Committee of C.A.U.T. hear from afar, ancestral voices prophesying war.

Further, the findings of a properly selected arbitration committee are most likely to be *seen* to be just; that is, the most likely to end controversy, polarization, confrontation, and further appeals.

The President as executive officer initiates dismissal procedures; he ought then not to act as jury in what has become his cause. An arbitration protects both the faculty member and the President from the consequences that may easily arise from the combining of these roles. The reason the C.A.U.T. specifically objects to the use of a hearing committee whose findings will be advisory only is that it fails to make this distinction between functions which we believe to be crucial to the guarantee of academic freedom. When a university President institutes dismissal proceedings in good faith against a faculty member, it is because he has concluded that there are grounds for dismissal, and that dismissal would be in the best interests of the university. He may be right but, by definition, he

is no longer impartial. The cause may not be personal, but it is nevertheless his because of his belief in it and commitment to it. Consequently, if the final decision on dismissal rests with the President, he is a judge in his own cause. The C.A.U.T. does not believe the wise chief executive should want the right as judge to pass on the validity of his own decision as chief executive. If the hearing committee recommended against dismissal and the President reversed that decision, either before or after referral for reconsideration, justice would not clearly be seen to be done. Further, if the President, having initiated dismissal proceedings, recommends dismissal to the Board of Governors contrary to the findings of the hearing committee. the Board whether it wishes to or not is put in the position of voting confidence in the President, and not merely on the merits of the individual case before it.

A final word needs to be said on the argument which is sometimes advanced that in those universities where presidents are chosen through proper selection procedures, and where administrators serving under him are chosen for limited terms through one or another democratic process, the safeguards to academic freedom discussed here need not be insisted upon. That surely is a dangerous confusion between person and function, between the rule of individuals and the rule of law. It is nowhere argued that nations evolving from absolute monarchy to parliamentary democracy no longer need a separation of executive functions from judicial functions, or that such democracies can now do without their courts. It is not the case that democratic university governance removes the need for safeguarding academic due process; rather it is a fact that democratic university governance ought to make those safeguards more universally accessible.

THE MILNER MEMORIAL AWARD

The first Milner Memorial Award was presented to the Honourable Mr. Justice Bora Laskin at the C.A.U.T. Council Meeting held in Toronto on Thursday, May 13, 1971. This Award is given in recognition for a distinguished contribution to the cause of academic freedom and is based on either actions undertaken on behalf of academic freedom, or on writings which contribute significantly to an understanding and strengthening of academic freedom in the Canadian community.

The award was presented to Mr. Justice Laskin by Dr. J. Percy Smith, Vice-President (Academic) University of Guelph and former Executive Secretary of the C.A.U.T., with the following citation:

> Bora Laskin has been honoured many times for his learning, which has found expression in his writings and in his years of work as a teacher of law; for his devotion to higher education, which found expression in the services that he has done for universities, as faculty member, board member, member of more committees than he now wants to think about, President of the Canadian Association of University Teachers and most recently as chancellor; for his service to Canadian society, as critic, counsellor, and judge in the highest courts of his province and his country.
>
> Throughout his career, he has been inspired by a passion for individual liberty, liberty that is in all ages under threat, always needing defenders. He has understood how liberty of thought and opinion may be jeopardized, at times even by those institutions that are intended to protect it; and it is no secret that the frequency with which he has written dissenting judgments has caused a certain raising of venerable eyebrows, even on occasion of judicial blood pressure. Professor Bora Laskin knew (and Mr. Justice Laskin has not forgotten) how precious a thing that particular aspect of civil liberty that we call academic freedom is. He fought for it passionately — in the first great public dispute in which the C.A.U.T. engaged; in negotiations with government over the activities of police on our campuses; in interventions in situations involving the rights of students and faculty members, with universities and governments, often known only to those immediately concerned. Bora Laskin was never officially a member of the C.A.U.T. Committee on Academic Freedom and Tenure. He did, however, occupy for many years an office next door to that of the

Chairman of the Committee. They were close colleagues and close friends, and their thinking about academic freedom deepened because they shared it. Jim Milner would have felt it to be profoundly right that the award named in his memory should go to this friend and associate.

The Honourable Mr. Justice Laskin responded as follows:

Mr. President, Members of the Council, Mrs. Milner, Ladies and Gentlemen.

The honour that you have done me today has a deeply personal meaning. No one, in the history of the C.A.U.T., served the cause of academic freedom more faithfully and with more fairness to both university and faculty than Jim Milner. To stand in the illumination of your testament to his labours is for me both a remembrance of a staunch and devoted friendship and a mark of generous measurement of my academic association.

That association has continued in a different context since I left teaching for judging almost six years ago. I am confident that I have not debased my academic credentials in taking on governors' duties; after all, the C.A.U.T. has not thought them to be unworthy of discharge by faculty members. I am resolved, moreover, that I shall not easily surrender a university connection; but, if that has to be as the years roll on, I shall have no difficulty in sustaining my private judgment of myself as an academic, because I will always be able to point to my honorary membership in the C.A.U.T. and, from now on, to the reinforcement provided by the Milner Memorial Award.

Protection of academic freedom was only one of the considerations that motivated the founders of the C.A.U.T. in 1950, and that not a very pressing one at the time. I can do no better than direct you to Ed Monahan's survey in volume 18 of the *Bulletin*, at page 80 of the 1970 summer number. No doubt, we emerged from the age of innocence as a result of the Crowe case in 1958, which compelled the C.A.U.T. to emphasize the connection between academic freedom and tenure. Jim Milner put the connection in proper perspective when he wrote that the reason for the insistence on tenure was to guard against the betrayal of academic freedom (see volume 16 of the *Bulletin* for December 1967, at p. 54). I may also observe that the pressure of the C.A.U.T. for a voice by faculty members in university government had as one of its objectives additional support for academic freedom.

Jim Milner's exposition of academic freedom is worth repeating; it is in these words:

> In essence it means the freedom of a faculty member to think and teach and of the student to think and learn, subject only to the restrictions imposed by the academic community that is the university itself. For the faculty member, of course, the definition must be taken to include the freedom to pursue research interests of his choice and to publish the results at which he arrives.
>
> It is easy to see that academic freedom is closely related to other freedoms that are precious to democratic life. It is easy also to see that it is particularly necessary — essential, indeed — to the life of a university, where young people reaching maturity assemble together with mature scholars to engage in the freest and richest possible search for and discussion of knowledge and ideas. Clearly, academic freedom can thrive only where criticism thrives, and it is reasonable that criticism should be directed to the university community itself as freely as to the subjects being studied or taught. The primary responsibilities of teaching and research demand a kind of community that only the eternal vigilance of its inhabitants can make secure.

I extract a comparison idea from this passage on which I wish to enlarge, namely, his reference to the relation of academic freedom to other freedoms that are precious to democratic life. The history of universities in Europe and in North America shows the duality of academic freedom and, moreover, a duality that has had different responses in each of those continents. In today's atmosphere, it may no longer be as simple as it was once thought to be, to distinguish between freedom in the classroom and freedom outside of the classroom; yet there must surely be some remnant of the constraint of a prescribed curriculum operative in the classroom.

Outside of the classroom, the professor wears his badge of citizenship without being liable to be called to account by his university for what he says in the public forum, so long as he does not purport to speak, without being so authorized, in the name of the university. He may be called to public account but that is another matter; and no university professor would claim sanctuary from any such sanction beyond what other citizens may claim. This aspect of academic freedom has expanded beyond the mere extra-mural utterance or publication. The professor has successfully asserted his and her political aspirations, his and her right to elective and appointive public office, with consequent accommodation of the university to such activities through limitation of classroom obligations or through provision for limited periods of leave.

We in Canada have not been actively seeking a legal framework within which to adjust conflicts between university and faculty on

issues of academic freedom and tenure. We cannot invoke the constitutional safeguards which evolving judicial interpretation in the United States has brought to the support of the American professoriate in these areas. And, speaking as a mere lawyer rather than as a judge, I doubt that doctrines of contract law are a proper underpinning for academic freedom, albeit they may reflect it in connection with tenure, which is more susceptible to contract arrangements.

In my days of association with the C.A.U.T. and in my role as a professor, I did not, nor did the C.A.U.T., regard academic freedom as a by-product of tenure. The latter was designed to safeguard the former and was not considered to be the device for its realization. This, I am certain, is still the philosophy of Canadian academics. In the article by Jim Milner to which I have already alluded, he made the point that academic tenure (if I may quote him again) "is akin to the security of appointment enjoyed by the judiciary, and the reasons for it are similar". I would be as dismayed as my academic friends to think that a golden principle of our judicial system, judicial independence, was simply residuary to security of employment, and not something rising above it.

I do not think much can be made of the distinction, in relation to tenure and its association with academic freedom, between conflict over the dismissal of tenured professors and conflict over the granting of tenure. The institutional arrangements are the important considerations here; and it is hence unreal to suggest that dismissal cases, rather than the refusal of permanent status, alone exhibit the intimate connection between academic freedom and tenure. It is, in my view, folly to deny the qualitative difference between the case of the tenured professor resisting dismissal and the probationary teacher seeking permanency. But violations of academic freedom are no less censurable in the latter case than in the former; and the decencies that inhere in academic life make it proper that reasons should be given for a denial of tenure to an eligible applicant.

What my random ruminations indicate is the wisdom shown by the C.A.U.T. in moving early in its still very short life to the development of standards, both substantive and procedural, for the protection of faculty members, consistently with the development and maintenance of quality in the universities. Because tenure has its drawbacks, notwithstanding its greater advantages, there is always a possibility that it may provide a cloak for the barely competent if not the incompetent. The same can be said about judicial tenure during good behaviour. Thus, the cutting edge must be set at the point where permanency is sought, and there ought to be no compromise with quality considerations at that stage. There was

a time, in my own academic experience, when long probationary periods carried their own seeds of injustice, but I am led to believe that they are on the wane if not already gone. Does any university need more than say, three years, to make up its mind about the competence of a term appointee ? Neglect of oversight during such a period ought not be visited upon the probationer.

I intend no general prescription; and my purpose in mentioning the wisdom of fixing standards, whether for hiring or for promotion or for dismissal, is to emphasize the role of the C.A.U.T. in the encouragement of orderly university administration. The standards must be recognized, where adopted, as restraints upon the faculty no less than upon the administration. They shore up representative self-government of the university which, in my view, is central to the intellectual liberty of faculty members.

What the C.A.U.T. has accomplished in the twenty-one years of its existence it owes, of course, to the firmness and moderation of many men and women, among whom the late Jim Milner must surely be counted. Proud as I am to be the first recipient of the award which bears his name. I am very conscious of the flanking spirits of courageous men who are no longer here. Vernon Fowke and Stewart Reid are very much in my thoughts today; they put academic freedom in a philosophical as well as in an institutional context long before I played any role in this vital area of faculty concern. And it is an unalloyed pleasure to note the presence here of Percy Smith, like me no longer among the saints, whose sure guidance as Executive Secretary was informed by a dedication of which so many of us were beneficiaries. How fortunate am I, above all, to have Mrs. Milner among us, to suffuse the Milner Memorial Award with the radiance of her charm, her intellect and her character that was such an inspiration to her husband in everything he did !

All of you have accommodated yourselves to my convenience in arranging this ceremony for the noon hour. I am grateful indeed and ask you to be assured of my continuing affection for the C.A.U.T. for what it has done and is continuing to do in protecting the integrity of our universities.

J. H. STEWART REID MEMORIAL FELLOWSHIP TRUST REPORT 1970-1971

Stewart Reid, the first Executive Secretary of C.A.U.T., died suddenly in December 1963. The Association's Executive and Finance Committee, wishing to pay suitable tribute to Stewart, set up, in January 1964, the Fellowship Trust which bears his name. Since I was the C.A.U.T. President in 1963-64 I was named Trustee in the official Declaration of Trust. This Declaration has subsequently been revised and now provides for three Trustees with specific terms of office. I have, however, continued to act as Chairman of this group. Now I am presenting my resignation effective June 30, 1971.

When the Trust was first formed the E. & F. Committee were determined that the annual award should be an important one and in launching its first appeal set the goal at $50,000. It was expected that this figure would provide sufficient income to permit an annual award of $2,500 (an amount which seemed very respectable in 1964), and pay the administrative expenses involved. In spite of repeated appeals the original goal has not yet been reached. In the meantime C.A.U.T. and the original Trustee have provided administrative and clerical services for the Trust Fund. The only expenditure from funds received has been for the Fellowship Awards themselves — to date $5,000. The first Scholarship Award was made in 1969 to Brian Joseph, a graduate of St. Francis-Xavier University, who spent the subsequent year at the Graduate School of the University of Toronto working in the field of Sociology. The second award was made in 1970 to John Lancaster, a graduate of York University, who during this past year studied Canadian Literature at Massey College, University of Toronto.

In the spring of 1971 there were over 200 candidates for our Fellowship. After short-listing seven of these applicants the Selection Committee took a preferential ballot. The unanimous choice of the three Committee members was Jeannette Harris, a student at Victoria College, who will continue next year at the University of Toronto in the field of English Literature. I should perhaps tell you at this point that there are no personal interviews and that the Committee gave no thought to the agitation of Women's Lib groups. Miss Harris was found to be the best candidate and the fact that the Award was won by a very attractive young lady is pure coincidence.

The academic scene in Canada has changed a great deal since 1963 and C.A.U.T. has played a role of ever-increasing importance. Stewart Reid laid the foundation for this growth and development. Always an inspiring teacher and recognized scholar, Stewart first became involved in matters of academic freedom and tenure during the Crowe-United College dispute. In spite of precarious health and other personal considerations, Stewart took a rock-firm stand on the matter of principle. His example led to the C.A.U.T. appointment of its first investigating committee — the Vernon Fowke-Bora Laskin Commission. Later when C.A.U.T. decided to set up its first national office Stewart was chosen as Executive Secretary. It was he who did most of the organizational work in the initial stages.

Stewart Reid had a great deal of initiative, imagination and vision. It was he who conceived of a commission to study the organization of Canadian universities and have governing bodies. He was largerly responsible for securing the necessary grant and selecting the commissioners who were to conduct the investigation. I am sure it is unnecessary to review the activities of the Duff-Berdahl Commission and the vast influence of its Report. What may be necessary is to remind Canadian academics that the original idea and impetus for this Commission was supplied by our first Executive Secretary.

Appended to this Report you will find a breakdown of the contributions and income received on behalf of the Trust Fund. I must confess that it is a matter of personal chagrin that in seven years we have not yet reached the original total of $50,000. I have considered it a privilege to serve as Trustee of this Fund and I am delighted to learn that my successor will be a long-time C.A.U.T. supporter who knew Stewart intimately. I am sure he will appreciate how important it is that steps be taken to secure wider support for this Trust.

Robert W. Torrens,
Trustee,
J. H. Stewart Reid,
Memorial Fellowship Trust.

July 18, 1971.

J. H. STEWART REID MEMORIAL FELLOWSHIP TRUST FUND

A.) INCOME

Contributions from local Faculty Associations	$18,521.34
Contributions from individuals	10,874.79
Contributions from C.A.U.T.	5,438.43
Income from investments	9,575.63
Royalties from *A Place of Liberty*	4,705.44
Other	607.89
	$49,723.52

B.) DISBURSEMENTS

Two Fellowships of $2,500 each	$ 5,000.00
C.) TOTAL	$44,723.52

As of June 30, 1971.

ONTARIO CONFEDERATION OF UNIVERSITY FACULTY ASSOCIATIONS

Position: EXECUTIVE VICE-CHAIRMAN

The Ontario Confederation of University Faculty Associations announces that it is now accepting applications for the position of Executive Vice-Chairman. The incumbent will be retiring to return to his university position on June 30, 1972. OCUFA hopes that it will be able to announce the appointment of his successor by the end of 1971, for a starting date around May 1, 1972.

The person we would like to hire is now an associate professor or professor in an Ontario university with an understanding of faculty association work, though we will, of course, consider all applicants. The job is a full-time one, and applicants must be willing to accept a three-year term. The salary will be negotiated. Benefits are comparable to those prevailing in Ontario universities.

Requests for more information, or applications, can be directed to The Chairman, Selection Committee, OCUFA, 40 Sussex Avenue, Toronto 181.

PROFESSOR-POWER and some of its CONSEQUENCES

Annual Report of the President, 1970-1971

The Physics of Professor-power

Ah, those naïve, happy, dark days in the fifties and early sixties, when those of us active in C.A.U.T. and local associations supposed that faculty participation in decision-making would usher in a splendid new era. that the professor-dominated university would be incomparably better than the old, administration and board-dominated establishment ! I even recall saying, in a lively debate under C.A.U.T. auspices with President N. A. M. MacKenzie of U.B.C., that in a professor-dominated university the faculty association, and ultimately the C.A.U.T., would wither away from atrophy, something like the state in the Marxist dream; this was said only ten years ago, but it seems like wisdom from another age.

If professor-power is a *necessary* condition for attaining our ideal and heart's desire, the truly liberal university, we now see clearly that it is not *sufficient.*

It is not sufficient because some of the worst abuses of academic freedom may occur in institutions which are professor-dominated. An example: academic due process has been more or less systematically flouted by a president whose legitimacy, from the faculty and student point of view, is greater than that of any of his fellows in Canada; he was in effect elected to his post by the vast majority of faculty votes and by a majority of students. Yet, despite explicit threat of censure by C.A.U.T., there has been no protest from significant numbers of the teaching staff. The reason is that many professors seem incapable of recognizing or of protesting arbitrary and grossly unfair actions committed by their colleagues or by administrators whom they have had a hand in naming. Yet three or four years previously, these same professors were up in arms about arbitrary actions of another president whose resignation they forced and who, in retrospect, seems a benign and distinguished figure indeed; they had had no say in the selection of their previous

president, for whom they demanded the capital penalty, although his sins were peccadillos by comparison with those of his successor.

Another factor which limits realization of our dream of the ideal liberal university is the operation of the academic uncertainty principle. This principle alleges that it is impossible to predict the behaviour of a colleague when he is elevated to the Board of Governors or to the higher reaches of the administration or to the Senate. This principle in its general form asserts that the changing of professorial hats causes a corresponding but unpredictable change in the operation of the neurons beneath.

The operation of both of these factors assures faculty associations of a vital function in even the most devotedly democratic of institutions. A powerful and alert faculty association is essential in the protection of academic freedom from assault from government, from boards of governors, from administrators, from students and from professorial indifference.

I append a cautionary note about the laws underlying proper function of a faculty association. There are two main areas of preoccupation of such an association, the first being the syndical, or trade-union, aspects (salaries, fringe benefits, recognition and status of the association) and the second being the ideological side (academic freedom, reform of the university and re-thinking its role in society, etc.). Preliminary sociological studies, not yet ready for publication, have led me to the principle of professorial complementarity, which states that the more a professor is concerned about the first of these categories the less will he be interested in the second and vice-versa. I have also discovered that those who fall into category one are politically to the right of centre and those in category two to the left. My research has also led me to the conclusion that those who militate by preference in the ranks of the provincial associations (O.C.U.F.A., F.A.P.U.Q.) tend to fit into the former category, whilst those who gravitate towards the national association (C.A.U.T.) fit more comfortably into the latter. The principle of complementarity thus necessitates strict attention to achieving a proper balance of both categories within the board of directors or executive of a strong local association and also within the governing bodies of the provincial and national bodies, in proportion to the distribution of their time and energies between the two categories of activity which I have outlined above.

Dangers of provincialism

I now advance my startling discovery that Provincialism leads to provincialism. The diminished role of the federal government in the financing of higher education and the now virtually complete

power of the provinces entails some dangerous and unpleasant consequences. Nationhood demands at least some universities of national reputation and prestige, but which province is willing to pay the price — political as well as pecuniary ? Are our "national" universities to disappear ? Another horrifying prospect would be if the provinces were to assert control over expenditure of research time and funds within their universities. Central governments, even when ungenerous in their support of university research, have never insisted on its being "relevant" to the immediate economic needs of the region. If the provinces get into the research business, will the same be true of them ?

As an innocent example of Provincialism leading to provincialism: Biology professors from across Ontario are spending a week together as I write these lines, discussing methods of teaching of Biology in Ontario. Anomalies like this come about since Ontario can scarcely be expected to organize and pay for a nationwide conference of the sort and the federal government is constitutionally prohibited from even thinking about it. So, long live Ontario Biology and Saskatchewan Art History !

I conclude that a strong federal presence in higher education is a *conditio sine qua non* of nationhood and something had better be done whilst there is yet time.

Dangers of Syndicalism

More and more associations are flirting with the idea of converting themselves into unions, with certification under the labour relations acts, collective bargaining and the like. Already, one Canadian university has adopted these procedures; this is the very recently founded Université du Québec. It would be unfair to blame all of the considerable troubles of the Montréal campus of this brave, new University on its syndicate. Part of their trouble nevertheless is due to the procrustean attempts to force a university into the labour-management model required by the Labour Code of the Province, some of the results of which are well described in the report on the Université du Québec, published in the *C.A.U.T. Bulletin* (volume 19, number 2). The advantages of the syndicalist model seem to be evident: they are first, recognition of the association with enforced discussions of salaries and conditions, and second, the possibility of increasing pressure toward a favourable settlement by means of conciliation, arbitration or withholding of service (strike, *quoi !*). The disadvantages or dangers are less apparent, so I shall cite some of them.

1. Collective bargaining, to be effective, must take place with an interlocutor who has the authority to make decisions, that is to say, who has the cash. The *de facto* type of bargaining which goes on

presently between association and administrators and Board (based on the latter's anticipation of funds to become available in the next year) will ultimately and perhaps quickly be replaced by negotiations between the provincial ministries on the one hand and the provincial federations of faculty associations on the other; the latter would have to be created in provinces where they do not now exist. It is obvious that not only salaries and fringe benefits would be on the table for negotiation; so would staff-student ratio, teaching loads, summer and outside employment, research time, sabbatical leaves and so on. This may be inevitable but the prospect is not pleasing. It is probable that no university could long maintain its uniqueness, its distinctness; each province would in effect have one provincial university. Does anyone want this ?

2. Academic freedom may not be so easily defended in the context of management-union negotiations, especially if, as in the case of the Université du Québec à Montréal, the local affiliates, not with C.A.U.T., but with a federated labour organization. The latter knows much more about job security than it does about academic freedom. In the case which I have just cited, the local syndicate has betrayed a perfect and total indifference to the gross violation of the academic freedom of many of their colleagues which resulted in censure of the President and Rector by C.A.U.T. The Administration of the Université du Québec has recently shown its sensitivity to these questions, I am happy to report, but *not* the local Syndicat des Professeurs which remains unconcerned.

3. I have alluded to some of the difficulties inherent in faculty participation in decision-making at all levels. I doubt that despite these we are ready to abandon participation. A very special structure would have to be devised to permit co-existence of these incompatibles: faculty domination of decision-making (not that this yet exists in most places) on the one hand and organization of faculty into unions on the other.

4. The rate of increase in professorial salaries has been impressive in the past ten years, in large measure due to the activities of strong local associations and, in the case of Ontario, of O.C.U.F.A. Indeed, weak associations have profited from the work of the strong, since even those university administrators able to ignore the representations of the local association are unwilling to allow their institutions to fall too far behind the leaders. Things are getting tougher now, we know. Will unions do better for us than our present associations, were these all to become as strong as the strongest ?

5. The labour-management model is to some extent incompatible with our ideal of the liberal university. An inevitable consequence of collective bargaining will be the creation of bargaining units that can perform best for their members. The law of the market-

place is for the moment such that a professor of History will have a weaker position than a professor of Engineering, and both will be weaker than a professor of Law. Professors of Law will thus band together to form their own bargaining units, as indeed they have already done at the Université de Montréal. We may ultimately see them bargain, not with the Ministry of Education, but with the Ministry of Justice while professors of the Medical Faculty negotiate with the Ministry of Health, etc. Thus, there must come a fragmentation of the University and a rupture of its fragile unity and sense of community which it is the business of faculty associations and C.A.U.T. to nurture and encourage.

I do not want to give the impression that C.A.U.T., or I for that matter, have taken a position on this question. I put forward these objections to stimulate discussion; I urge anyone who favours the labour-management model to consider most seriously my point 5. One final word: failure to achieve powerful local staff associations, able and willing to intervene forcefully in all aspects of the government of the university, is the best argument for syndicalism and will lead inevitably to it. The ultimate choice will be between a strong professional association or a strong union. One would hope that university administrators will be clever enough to grasp this rather simple fact of life before it is too late.

The attack on the University

Tenure

It became apparent to me when I represented C.A.U.T. at the November 1970 meeting of the Association of Universities and Colleges of Canada (which is essentially a trade-union of university administrators supported entirely from public funds) that a secret deal had been concluded between the conservative university presidents and the radical student leaders. How else to explain their common attack on tenure? (Their other common obsession was, of course, C.A.U.T.) The argument runs that tenure is a refuge of the senile, the incompetent, the lazy, the indifferent; the tenured professors "know that only death, retirement or assassinating a member of the board of trustees can ever threaten their security". This last is drawn from an article by Nat Hentoff, entitled "Freeing the University: Abolish Tenure" (*Evergreen Review*, December, 1969). One of the most surprising things about this dreary debate is that many of our professorial colleagues also seem to think that tenure is protection for the incompetent rather than what it in fact is, the commitment of the University not to dismiss the tenured individual except for cause. Now it seems to me that any reasonable person would be constrained to admit that incompetence and senility are cause for dismissal; as for laziness and failure to prepare

lectures or keep reasonably up-to-date, these are described as in violation of the *C.A.U.T. Guidelines on Professional Ethics,* and thus would also constitute cause, if proved. Thus whatever tenure may be, it is *not* protection of the lazy or incompetent.

Incidentally, despite the popularity of this argument among our critics of the left and right, it falls to the ground for yet another reason. In fact, I doubt that there exists in any Canadian university the paradigm that is described in this argument (see the sad little article by Dean Deane, of Bishop's University, *Globe and Mail Magazine,* December 19th, 1970), namely the incompetent, lazy professor, still using his undergraduate lecture notes for his own lectures, not interested in research or scholarship, not active in university affairs, and merely serving time until retirement. And if one day such a paragon of sins is unearthed on some campus, then the Chairman of his Department and the Dean of his Faculty will have to answer for their incompetence in not having initiated the appropriate procedures for dismissal for cause.

Despite the patently absurd character of this argument, it spreads and as I have said is often heard issuing from professorial mouths. I have a modest proposal to make in this connexion: this is that we eliminate the word *tenure* and substitute for it the phrase "automatic renewal except for cause". In French, we could call it *le système d'impermanence avec non-renouvellement pour cause.* Under this system no one has tenure, but after a probationary period of, say, five years, the university would agree to renew automatically the contract of any professor except, of course, for cause when he could be let go following an academic arbitration procedure. Our lawgivers, the discontented public and the ignorant within our own profession would thus be reassured that, since no one has tenure, the incompetent and lazy could be eliminated and we might be left in peace on this score at least. No one would have tenure and yet we would have exactly the same system which now operates, and extremely well in my opinion.

Research

The other major threat is the attack on the research function of the university. Here too, we see the joining of forces by conservative elements of society (particularly in government) and radical students: the new barbarians. In this argument, too, among our own worst enemies are some of our own, who from time to time make loud noises, dutifully reproduced in the newspapers, in which they assert that 50% or 75% of all university research is crap. When this argument was used at a recent O.C.U.F.A. seminar, I asked rhetorically what crappy research was and provided my own answer: crap is research done by one's colleagues. I will change

this definition when someone tells me that his own current research is crap. This definition will thus stand for some time, I am sure.

How do we counter the thrusts of the new barbarians. The right way I believe, is to stress the importance of scholarly and scientific research as a part of human culture, rather than to use the whorish argument that fundamental (curiosity) research has on occasion had some direct economic or social benefits. This latter argument is dangerous in that if the reason for encouraging fundamental research is medical or commercial fall-out, then clearly there would be more and better fall-out from a programme of applied, or mission-oriented research to use the horrid jargon of our time. How to persuade the new barbarians of the value of culture is an important question for which I have no answer. It might be easier to persuade them that research institutes are for those who want to do research and not teach, that community colleges or C.E.G.E.P. are for those who want to teach and are not especially interested in research, but that universities have equal responsibilities in both fields.

To some extent, the research function of the university is incompatible with its newer role as vocational school, as producer of specialists for the labour market. Since this latter role is better comprehended by those who hand out the cash, it is not surprising that it is this aspect of the university's function which is most emphasized by those whose job it is to squeeze money from the state for the universities. But then we ought not to be surprised if the money-givers should try to reduce the fraction of university time and money that goes toward basic research.

One of the major tasks of the national and provincial associations must be to attempt to mobilize public opinion against the attempts of the new barbarians of left and right to strangle the universities and the scholarly activities which rightfully go on there. Here would be one field of fruitful cooperation between C.A.U.T. and the A.U.C.C.; let us hope that the next time both take up arms it will not be against one another as has too often been the case in the past, but in common cause.

Reform of the University : practising what we preach

Having been the spokesman this year for the organized professoriate of Canada, I was forced to re-examine many of my own ideas about the institutions in which we practice. I submit here some of the conclusions to which I have been led and one or two predictions.

1. Community of scholars ? Some years ago, under the inspiration of the late Stewart Reid, a group of Canadian professors brought out a thoughtful collection of essays about the state of our universities

(*A Place of Liberty*, George Whalley, ed., Clarke-Irwin, 1964). The original intention had been to call the book "Community of Scholars", but this had to be abandoned when Paul Goodman brought out a book under the same title at about the same time. The air was thick with this phrase for some years. What has befallen the scholarly community that we never hear ought about it any more ? The reason, I suppose, is that our students eventually caught wise and insisted that it applied, reasonably enough, to them as well; starting with the community of scholars they ended up by demanding parity in decision-making bodies with their professorial senior colleagues in the community, making this slogan seem less attractive to these latter than when it had been their exclusive property.

Yet we are, for all that, a community; this term need not imply that all its members have an equal interest or an equal responsibility or an equal voice in all its affairs. It is in this perspective that I make the following suggestions.

2. The existence of an academic hierarchy of ranks seems to me contradictory in spirit to the notion of community, and more appropriate to an ecclesiastical or a military establishment. Once a person is named to the teaching staff he should become a professor. The only university in Canada to abolish ranks, *que je sache*, is the Université du Québec, but here the authorities have substituted four "*catégories*", numbered one through four, to correspond to the ranks of lecturer, assistant, associate and full professor; *plus ça change plus c'est la même chose*. My proposal is for the abolition of ranks *tout court*; professors would be professors regardless of seniority and distinction. The advantages of this proposed reform are slim, I admit, essentially reducing to one: consistency with the model of the democratic, self-governing community of scholars. On the other hand, I see no advantages whatever to the present hierarchical system which is a vestige of another era.

3. One dramatic and symbolic act to illustrate our desire to emphasize the cultural role of the university rather than its vocational and accreditation function would be the abolition of final course examinations. I am well aware of the many pedagogical advantages of examinations, but these could be retained by requiring students to demonstrate a required degree of competence and background preparation before enrolling in any course. Each professor might thus set an examination, written or oral, which students would have to pass before being admissible to his course. The reason for taking any course would thus not be to acquire necessary credits by passing a final exam, but rather better to prepare oneself for admission to a more advanced course, or for a synthetic comprehensive examination at the end of the final year of study

in any particular programme. A friend of mine attempted to introduce a system similar to the one I have outlined here whilst he was Dean of the Arts Faculty at a university in the Maritimes but he was quickly de-deaned for his trouble, so the system has never been tried. It should be.

4. Once the university has lost its obsession with accreditation, we might take the next step, which would be the abolition of all faculties and specialized schools. They would be replaced by a Faculty of Undergraduate Studies and a Faculty of Graduate Studies, this latter subdivided into specialty committees, such as Science, Medicine, Law, etc., who would be responsible for the strictly professional studies leading to advanced degrees. I will develop this idea in a later article since the proposal is too revolutionary to be urgent. Its principal advantage would be to restore a unity, undivided by artificial barriers, to our at present fractionated community of scholars.

5. I would like to see widespread recognition of the notion that our primary profession is that of professor, and not that of chemist, linguist or expert in law, nutrition or proctology (torts, tarts or . . .). That we seem to desire such an evolution in attitudes is bespoken by the recent adoption of a code of professional ethics by the C.A.U.T. One of the less attractive activities of a genuine professional association is the disciplining of certain of its own members for breaches of professional ethics. C.A.U.T. has never taken such action, although in contrast we have never hesitated to call public attention to the lapses in academic etiquette of our colleagues in administration. I believe that such disciplinary action will become an increasing fraction of C.A.U.T. business. To my knowledge, several cases of breach of ethics have already been reported to C.A.U.T. and the time has perhaps come to take action of some sort. A corollary of this is that our provincial affiliates may ultimately acquire a licencing, or accreditation function.

6. Now that the opting-out formula is universal in Ontario, our next step should be to press for the adoption of the Rand formula. No professor should be forced to join his faculty association, but his dues should be deducted at the source whether he is a member or not. All professors receive the benefits and protection of membership, whether or not they join, hence all should pay. Within a few years we should see the adoption of the Rand formula by some Canadian universities.

7. The kind of unified academic community which I envisage can more easily be achieved in an institution of moderate size. Faculty associations should accept their share of the responsibility of determining the optimal size for their own universities. They should see

to it that the senior academic body takes action to prevent the headlong hypertrophy which produces the academic monsters that have been developing in the large cities of our country.

8. I have been called upon to mediate a number of bitter disputes on Canadian campuses with occasional success but more frequent failure. These disputes have the character of a Greek tragedy with the administrator playing the part of the doomed tyrant powerless to alter the tragic *dénouement* to which he is conducting his small kingdom. These unhappy disputes are entirely evitable and since there is sufficient tragedy in the world without these gratuitous additions to the stock, I offer the following suggestions. They are based on the obvious proposition that the best treatment of this type of academic disease is prophyllaxis. They are also based on my observation that the most frequent cause of violent dispute is what appear to be arbitrary actions on the part of chairmen, deans or presidents in cases of non-renewal or promotion of staff on probationary contracts.

In the first place, no decision of this sort should be made in the first instance by a single person; the decision should be taken by an appropriate committee or, *le cas échéant*, by the whole department. In the second place, no chairman, dean or president should overrule a recommendation (either for or against the party in question) made by the appropriate academic body without, *a*, giving reasons and *b*, providing an appeal, utilizing procedures agreed to in advance by the faculty association.

In the third place, whenever a disagreement arises of a potentially serious nature, the faculty association should have the discretionary power to demand that it be resolved by a hearing committee named jointly by itself and the Administration. The President should commit himself in advance to being morally bound by the decision of the committee and so should the faculty association.

Finally, I should like to see the realization of the dream of my predecessor, Professor Willard Allen: the establishment by A.U.C.C. and C.A.U.T. of an academic tribunal which could serve as a court of last resort. Faculty associations and administrations would agree as to the type of cases which could be submitted and have to commit themselves in advance to be bound by decisions of this tribunal. This is a logical extension of C.A.U.T.'s insistence on resolution of academic disputes within the university community. I note that the British A.U.T. is pressing the Committee of Vice-Chancellors for joint establishment of an independent university tribunal to hear appeals in case of dismissal.

9. The notion of community and the evolution of professor-power morally obliges the faculty associations to take an active and

sympathetic interest in the problems of the two other major components of our community, the students and the support personnel. Professor-power means that any exploitation of either of these groups is our moral responsibility. The students, who increasingly manifest hostility toward the organized professoriate, have recognized the change in the university power structure, and it is time that we do the same by accepting the responsibility which our new authority entails.

J. Gordin Kaplan,
President, C.A.U.T.
Department of Biology
University of Ottawa

PRÉSIDENT DE L'A.C.P.U.

1971-1972

C.A.U.T. PRESIDENT

M[e] Robert J. Bertrand, le nouveau président de l'A.C.P.U., est professeur agrégé à la Faculté de Droit de l'Université de Montréal. Il a commencé ses études de droit à l'Université de Montréal et, après avoir obtenu sa maîtrise, est allé poursuivre ses études post-graduées au London School of Economics et à Harvard.

Spécialiste en droit fiscal et en finances publiques, il a participé aux travaux de la commission royale d'enquête sur la fiscalité à titre de consultant et recherchiste. Il fut appelé à collaborer avec les travaux du ministère des Finances et le ministère de la Consommation et des Corporations. Dernièrement, tout en remplissant des fonctions d'enseignement à l'Université de Montréal, à l'Université d'Ottawa et à l'Université de Sherbrooke, il a servi comme conseiller dans les cadres d'un programme d'assistance technique de l'A.C.D.I. au Niger.

Membre de l'exécutif de l'A.C.P.U. depuis 1969, monsieur Bertrand fut élu vice-président en 1970 et président à l'occasion de la réunion du Conseil en mai 1971.

ANNUAL REPORT OF THE EXECUTIVE SECRETARY

The ongoing work of C.A.U.T. during this last year has been much helped through the addition to the Central Office of an Information Officer whose tasks have included among other things the launching of the new *C.A.U.T. Newsletter.* It was first named *C.A.U.T. 1970,* and then, with less spontaneity, *C.A.U.T. 1971.* Some of our members think that it should have a more specific name, and indeed we have had a number of suggestions ingenious, resourceful, and so far at least, unconvincing. Perhaps we should engage in a spirited national competition with appropriate prizes — the first might be honorary tenure at the University of Baffin Island.

Nameless or otherwise, the *Newsletter* has been very well received, and very widely read. It serves as introduction to the first topic I want to comment on, that of communications. As a voluntary association representing some 47 member associations and about 16,000 individual members, across 4,500 miles, we have been keenly conscious of the problems of maintaining adequate communications with our membership. The *Newsletter* has helped this year and will continue to do so even more effectively. We are proposing that a member of the executive of each member association (perhaps the vice-president) be specifically delegated to maintain liaison with C.A.U.T., and to supply us with information on activities and developments at the local level that can usefully be shared with the entire membership through the *Newsletter.*

With the advent of the *Newsletter*, the *C.A.U.T. Bulletin* has removed itself largely from its concern with immediately topical material to become an organ of official documents and reports, and articles on subjects of lasting interest to academics. Our policy on publications is under review and it is possible that there will be changes, but I do think that we have opened the door to more regular and a more timely sharing of information.

At the same time, because of the extraordinarily heavy activity on other fronts that I will come to later and given our limited staff, our visits to member associations have declined somewhat. Members of the professional staff and the President visited just over half of the campuses we represent this year, as compared to about two-thirds last year. I don't think that is good enough, frankly, but we are trying to devise some new organizational plans so that we can improve on that performance next year.

In addition to the *Newsletter*, the *Bulletin*, and visits to member associations, this year there has been a great deal of communication

with local executives on specific problems, much of it by telephone. We have been gratified by how frequently we have been called for advice on difficult individual grievances or on more general problems in university governance or regulations on appointments — advice which has often helped to anticipate or to avoid serious wrangles or major A.F. & T. cases.

So far I have talked about communications under the usual assumption that Communication is a Good Thing. There hovers on the horizon, however, several other kinds of communication that I believe faculty should be worried about. These are forms of information-gathering and of communication that represent some real threats to academic freedom, and to privacy. I refer, first of all, to the recent invocation of the War Measures Act and the enactment of the Public Order Act.

You already know that we made representations to the government about our concern over the dangers inherent to academic freedom in both of those measures, and we are gratified that both have been put to rest. But it is by no means clear whether these measures have not generated a new atmosphere and a new sense of precedent in governmental attitudes toward the universities. The Prime Minister in an interview with the C.B.S. program "60 Minutes" on 8 December 1970 said, ". . . in 1961 a policy was affirmed and then reaffirmed I believe in '63 or '64, that there would be no police surveillance of university campuses and so on in the name of freedom of thought and the freedom of teaching and so on. And it was at this time a good decision. But it is apparent that if the revolutions and the revolts are going to begin on campuses, it is apparent that if the instigators of violent dissent are going to find their natural milieu there, that there can be no more exception for the intellectual part of the community in the name of academic freedom, than there can be for you and me in the name of any other freedom." That suggests that there may be changes taking place in the policies that govern police surveillance and R.C.M.P. activity on campuses.

These policies were established by the Pearson government, largely as a result of a brief presented by the C.A.U.T. On several occasions recently the Solicitor-General has stated that he sees no reason why the university should be exempt from any information-gathering activities of government or of police. There is no time here to indicate how serious a development this may prove to be — to do so would involve for instance a complete review of the earlier C.A.U.T. Brief to the Government on Security — though I think just such a review is precisely what C.A.U.T. *must* undertake in the next months.

The second area of concern about information-gathering and communication is the development of data banks — so far provincial

in nature — that wish to collect information on individual faculty members. At least two provinces, through governmental agencies, have indicated their wish to collect salary and related information, preferably through D.B.S., that would include the Social Insurance Number of every faculty member in the provincial universities, thus making it possible to identify individuals and to accumulate lifetime files on them. The desire for such information appears to be grounded in the need to undertake long-term studies in faculty mobility, and on real increases in salaries. I am not convinced, laudatory as these studies may be, that they justify the personal identification of individuals. Nor am I convinced that the granting of permission by respondents supplying such information — which means business officers or administrative vice-presidents of individual universities — constitutes a proper interpretation of the protections intended by the Statistics Act. We have asked for clarification on these matters from D.B.S. It is too early, I think, to say how imminent a threat this invasion of privacy may be, but it is certainly not too early for C.A.U.T. and for local faculty associations to express their concern.

The Chairman of the Committee on Academic Freedom and Tenure has made his own report on our activities in this area, and I will say very little on this topic. The steadily increasing load of A.F. & T. cases continues to concern us deeply, not only because it demands so large a proportion of our time and financial resources, but because it bespeaks confusion and disorder on the campuses, and frequently, the absence of effective local regulations and procedures.

On other fronts, C.A.U.T. has this year launched more numerous and more diverse activities than ever before. We are discussing at this Council meeting a brief on federal support to higher education, and we have just finished the preparation of briefs on a Canadian book-publishing industry to the federal government and to the Ontario Commission on Publishing. We have re-activated a committee on the status of women faculty members, an issue that has been dormant since C.A.U.T. prepared a study for the Royal Commission on the Status of Women — a study, incidentally, which was the very first one to be published by the Royal Commission and which has had as a result very wide publicity. We have launched a study of faculty workloads. We have a committee pressing for the collection of more useful and more thorough information on university manpower needs. We have just created a committee to gather and study material on collective bargaining in both academic and non-academic areas. We have a committee working on guidelines on professional orientation, including possible ways of assisting young people entering the profession to become effective classroom

teachers. We have a committee studying the feasibility of C.A.U.T.-sponsored insurance plans, particularly in the areas of automobile and house insurance, and of the feasibility of providing discount buying for a variety of consumer goods. And we have been deeply involved in the problems having to do with relations between federal, provincial, and local faculty associations — as those of you who attended the Council workshops already know.

Each of these committees, in addition to several others I have not even mentioned, requires one representative of the professional staff for purposes of organization, liaison, and support work, and frequently a member of the Executive Committee as well. Consequently, the Executive Committee has worked a good deal more, between its own meetings, than ever before. As for the Central Office, I cannot say enough without embarrassing everyone. A very generous amount of the activity I have been describing has been the work of Don Savage and Wilf Dubé, our Associate Executive Secretaries, as well as of Mrs. Mitchell whose work as Information Officer I have already mentioned. I rejoice that we have acquired a new Research Officer, M. Bertrand Dionne, who joined us on the first of May. As for our support staff — Mr. Dwyer, Mrs. Reid, Mrs. Peters and Mrs. Fortin — I cannot tell you how impressive I find their dedication to the C.A.U.T. cause, a dedication which is — as they say on other fields of battle — above and beyond the call of duty.

I should like to end with a few final words in the prophetic mode. After a period of at least 15 years during which the Canadian university has expanded rapidly and continuously, the signs of deceleration are pretty evident. For a few years at least we will be confronted with a shrinking job market, and with sharply reduced rates of university expansion. In some areas the possibility of faculty cutbacks looms heavily, or is already a reality. It is inevitable that there should be consequent changes in the perspectives and activities of faculty associations. The most obvious, at the present time, will result from the growing uneasiness in faculty associations with their deteriorating relationships with Boards of Governors and university administrations and provincial bodies in such areas as salary negotiations and the establishment of terms and conditions of employment. C.A.U.T. must give, and give very rapidly, its time, energy and wisdom to thinking out and providing guidance on these problems. The workshop scheduled for tomorrow on the recognition of faculty associations is just the beginning of that enterprise. We need to develop a more coherent body of information, and possibly guidelines, across a broad area of related issues: on more open budgeting and policy making; on the implications of formal recognition, of collective bargaining, of

syndicalism; on the relationship of these modalities to professionalism and to academic freedom, and to our traditional insistence that the university is properly governed through shared responsibility.

I think we must continue to study the implications of university financing — not only its scale, but its sources — in relationship to the maintenance of a proper degree of university autonomy, of academic excellence, of faculty remuneration at an honourable level in relation to other professions.

And finally, despite the claims made from time to time that we have arrived at the totally post-duff-berdahlized university in Canada, I am convinced that we must continue to work persistently for reform and improvement in university governance. That admirable collection of essays, *A Place of Liberty*, was published seven years ago, in 1964. In the Preface, the editor — Professor George Whalley of Queen's University — listed as first among the cardinal considerations upon which any reform of university government and administration should turn, the following:

"The judgment of the academic staff should influence all decisions made by or on behalf of universities."

This condition may in a few places now appear as actual; but in the majority of Canadian universities it remains a goal still to be achieved.

Alwyn Berland
Executive Secretary

14 May 1971

ANNUAL REPORT of the COMMITTEE on ACADEMIC FREEDOM and TENURE 1970-1971

It seems only right that the committee that takes up so much of your time on the Council agenda should give you some annual account of its activities.

Prudence dictates that at the beginning I should justify our heavy long distance telephone bill by citing the number of cases the committee has handled during the past year. In 1970-71 the committee has dealt with some 85 cases, coming to us from 32 Canadian universities. 70 of these were new and 15 were holdovers (though I should add that among the holdovers was the case from the Université du Québec à Montréal which involved nearly 30 faculty members). But after flourishing these figures, I should go on and explain that a count like this can be misleading.

These cases have made quite uneven demands on us. In one we may have received a phone call from a faculty member telling us that he was about to be dismissed and asking us to dispatch an investigating committee by the next plane. When we asked him to let us have the particulars in writing, we received nothing, and on further inquiry learned that he was not in fact going to be dismissed, but rather that when his departmental chairman asked him for information about his current research, he had feared the worst. In such a case, we informed the local association about the inquiry and treated the matter as closed. In another case, however, we may have found ourselves involved over a period of more than half a year in voluminous correspondence, numerous telephone calls, hours of discussion in meetings of the A.F.&T. committee, several visits to the campus, and finally a report recommending a course of action to the Executive Committee and this Council.

Between these two extremes lie most of the cases handled by A.F.&T., and it may be informative for you to hear briefly the procedures that we normally use. However, the appeal first comes to us, we ask the faculty member to let us have a full account of his grievance in writing, together with an indication of the solution that he himself thinks would be appropriate.

If he has not done so already we urge him to approach his local faculty association for help though we ask him and the local to keep us informed about developments. We may discover that he

has already been to his local association and has been advised by them to come to us. Or we learn occasionally that he hasn't confidence in the local and therefore wants to come to us directly. When we take up a case, we write to the appropriate administrative officer — chairman, dean, sometimes the university president if matters have gone that far — reporting the allegations and requests of the faculty member concerned. We send a copy of this and subsequent correspondence to the local association.

Our correspondence with the departmental chairman or dean can lead to one of a number of results. We may find ourselves asking him to arrange for some further local review of the case; we may judge that the matter has been fairly handled by the university and therefore tell the faculty member that we cannot pursue his appeal further; we may judge that the university has been negligent in some respect and that the faculty member deserves redress.

The correspondence in these cases is normally handled by Donald Savage, who is the secretary of the A.F.&T. committee, after consultation with the committee chairman. Sometimes when the case is urgent, and the action follows some clearly established practice of the A.F.&T. committee, the secretary and the chairman will make a firm proposal to the chairman or dean involved, and report their action to the next meeting of the committee. But normally the interval between committee meetings is devoted to following through on decisions of the last meeting, and assembling the necessary information to allow the committee at its next meeting to discuss and come to a decision about new cases.

During 1970-71, the committee met for two-day sessions in September, in November, in January, in March; and a fifth meeting is scheduled for late June. Though most of the committee's time is given to case work, there has always been attention given to discussion of general issues in the area of academic freedom and tenure — in the past, for instance, to the preparation and revision of the policy statement on appointments and tenure — and this year has been no exception. The committee has spent a portion of each meeting discussing two documents that appear on this agenda — a handbook of grievance procedures for the use both of individual faculty members and local associations, and a series of guidelines to deal with a problem that arose first in the province of Quebec, but which is now appearing across the country, the problem of budgetary restraints and consequent cut-backs in faculty appointments.

So much then for the specific labours of the committee. In reporting I think it would be useful also to describe some of the more general problems that we face.

Some are familiar. We still encounter chairmen, deans, and presidents — whether elected or not — who are impatient with the processes of consultation, jealous of their own power of decision, and consequently deeply affronted by any appeal against decisions taken by them. And matching these administrative officers are faculty members who have such confidence in their own achievements and abilities that they suspect that any review of their own term appointments is a violation of their academic freedom. I wish it were possible to report clear evidence that these two species are nearing extinction. They work in perfect combination, first to produce A.F.&T. cases, and then to hinder their settlement. On more than one occasion we have longed in the A.F.&T. committee to see these creatures devour each other.

There is another problem, not altogether new but one that we appear to be meeting more frequently. That is the reluctance of local faculty associations to take a real interest in their local A.F.&T. cases — associations who offer only a perfunctory response to appeals from their members, or who say "C.A.U.T. is better equipped than us, take it to them." This seems to happen when A.F.&T. cases threaten to have some local political reverberation. It is then that a faculty association is most anxious to pass the cases on to C.A.U.T.

I do not refer necessarily to cases in which specific political issues are in dispute, but rather to cases — whatever their nature — that threaten to set one group on campus against another. You may, for instance, have an established university that has grown very rapidly in recent years, in which there is some potential conflict between older and younger faculty members that could be actuated by an A.F.&T. case. Ironically enough, the problem may arise more easily in a "democratized" university than in the sort of university community that was normal when C.A.U.T. was born.

Where the professoriat has little say in the conduct of university business, it can be comparatively easy for the local association to rally strong support for an aggrieved colleague. It is more difficult to persuade the mass of our colleagues to support an individual faculty appeal when that appeal may be calling into question the wisdom of administrators who were chosen by committees composed of these same colleagues, or even elected directly by them. In most of our universities we can say now with much greater conviction than we could ten years ago, "We are the university," but if that is true, it can mean that when an individual faculty member appeals against the treatment he has received from the university, he is in some sense appealing against us. And when that happens, we are

just as capable perhaps as the classic dean or chairman of betraying signs of bewilderment or indignation.

I do not believe this development is inevitable. And I would argue that its possibility should not deter a local faculty association from receiving and investigating vigorously an A.F.&T. appeal from one of its members. To the extent that any of us in our universities have been able to realize the traditional affirmation of professors, "We are the university," to that extent we must share the problems of the university with those who hold official administrative appointments. But there may be situations in which responsibility and loyalty to the university take the form of forcing that university to modify or revise its actions. Furthermore, as the existence of the local faculty association and of C.A.U.T. reminds us, the interests of faculty members are to some degree distinguishable from the interests of the total university and when our distinct interests are in jeopardy, we may have to act in common and dispute the matter with some other element in the university, be it administration or students.

Faculty associations don't need to be reminded that if the administration is allowed to pay certain of our colleagues below the salary minimum, our own salary position is likely to deteriorate rapidly. But faculty associations may sometimes need to be reminded that if they allow the university administration to treat certain of our colleagues — even the most prickly and irritating — with less than justice, then the entire professoriat becomes more vulnerable in the future. It has become an axiom in the A.F.&T. committee that if we don't manage to turn a university administration around in a serious case, we can expect a steady and increasing flow of cases from that university in the years following. And we seldom manage to turn a university administration around unless there is also vigorous action from the local association. In fact, if there is vigorous action from the local association, we probably won't get cases from that university at all.

Unfortunately, the converse is not true, that where our committee has the support of the local, we always manage to turn the university around; the University of Victoria faculty association has been exemplary in following up the three cases appealed to us, but so far neither we, nor the local, nor the University of Victoria student body has made any real impression on a university administration stubbornly committed to its own interests. Nevertheless, our experience is clear; where the local is willing to act vigorously on appeals of its members, the chances of a quick, reasonable solution are good. If the cases go on to the A.F.&T. committee, the chances for settlement are infinitely better if the local association takes an active part.

Another problem we face is the increasing militancy of university presidents at a time when academic appointments are in great demand. Some presidents seem to have decided that a tough job market is the time to shake up the academic staff -- to get rid of the dead wood, as the patronizing phrase goes. The situation presents a special challenge to our committee and to local faculty associations. We can't and don't want to be forced into a situation where we are defending mere job security, without regard to qualifications and abilities. But we cannot either accept a situation where administrative officers, in the name of improving academic standards, shortcircuit fair procedures in the review of academic appointments — particularly at a time when the faculty member whose appointment is not renewed will probably find himself living on welfare.

And if this development brings us more frequently to confrontation, to serious cases reported to the Council, we should not be surprised. We shouldn't be alarmed if the question of censure comes before this Council more frequently than any of us anticipated when the action was first taken in 1968. The spectacular success of censure in the first case at Simon Fraser, and in the case of the University of New Brunswick, may have beguiled us into thinking that we have at our disposal some kind of doomsday weapon. If we think of censure primarily as a weapon or sanction, then we are bound to be haunted by the fear that if we use it too often, someone, sometime, will decide to stand up to its blast, and if he is not demolished in an instant, then all our power will be gone. We should recall something of the older sense of the word *censure* — "the solemn opinion or judgment of an expert." C.A.U.T. professes to be expert in the scrutiny of matters relating to academic freedom, appointment, and tenure. Our censure before anything else is a perception and declaration that in a given university certain kinds of actions have taken place, and that measured by academic criteria these actions are seriously defective. *Censure* constitutes a weapon so long as the university community — faculty, students, and administrators — regard our judgment as expert, so long as they respect and value it. Our job is to preserve the integrity of our judgment — speaking frankly on behalf of faculty interest, yet locating the interests of faculty within the context of the whole university.

These are some of the problems that now confront the academic freedom and tenure committee. No doubt we shall be exemplifying them for you in subsequent matters in this agenda, and in reports from our committee in future Council meetings.

One last matter. I want to thank those members of our committee who are completing their tours of duty, David Hart of Memorial University, Philippe Taschereau of the Université de Montréal, and

Robert Chambers of Trent. And also to note the contribution of those new members who joined the committee last September, Marion Smith of Brock, Howard McCurdy of Windsor, and Dale Gibson of the University of Manitoba.

Archie Malloch (Chairman)
McGill University.

UNIVERSITY OF TORONTO - ANNUAL SALARIES OF FULL-TIME ACADEMIC STAFF DURING 1970-71 *
(Salaries actually being paid)

	Deans and equivalent director (1)	Dept. Heads etc. who are full profs. (2)	Other full professors (3)	All full profs. (Total of 2 + 3) (4)	Associate professors (5)	Assistant professors (6)	The rank immediately below asst. professor (7)	The ranks immediately below the preceding (8)	Others (incl. visiting staff) (9)
Number in rank	22	76	411	487	530	546	183	55	129
10th Percentile		21,500	18,850	19,000	14,200	11,500	9,000	7,260	10,900
Arithmetic mean salary (Average)		28,139	23,411	24,149	17,060	13,993	10,905	8,960	15,568
90th Percentile		33,885	29,200	30,040	20,310	17,000	13,000	11,050	19,475
Overall average salary (arithmetic mean) for all ranks combined:							including Deans		17,195
							excluding "		17,067

Compiled by Dominion Bureau of Statistics
* These figures received in August complete salary information data published in C.A.U.T. Bulletin, Vol. 19, no. 3, pp. 26-37.

The C.A.U.T. BRIEF concerning the BOOK PUBLISHING INDUSTRY

This brief was prepared by the C.A.U.T. Committee on Curriculum, Research and Education created by Council in May 1970. Chaired by Professor Serge Losique (Sir George Williams), the committee is composed of the following professors: Pierre Couillard (Montréal), Hugh MacLennan (McGill), Kenneth McNaught (Toronto) and Donald Savage (C.A.U.T., Central Office). It was submitted to the Government of Canada on 4 May 1971 and incorporated into the brief submitted to the Ontario Royal Commission on the Book Publishing Industry.

Preamble

The Canadian Association of University Teachers is a voluntary organization of approximately 16,000 full-time university professors in forty-seven universities across the country.

The C.A.U.T. believes that it is a necessary element in the maintenance of Canadian identity for there to be a Canadian book publishing industry. We believe that this is analagous to the concern already expressed by the Canadian government in the fields of broadcasting and newspaper publishing. It is also self-evident that book publishing is a prime concern to the university and especially to university teachers and students.

We understand that it is the intention of the federal government to assist the book publishing industry and this brief is, therefore, more concerned with the specific details of such a plan rather than the theoretical justification of it.

Finally we do not consider that every publishing company in Canada merits the assistance of the government just because it is Canadian and, as a consequence, we suggest various structures and criteria which we hope will assist the government in distributing its support in this area wisely.

1. We recommend that the Government create a corporation similar to the Canadian Film Development Corporation to be the agency mainly concerned with assistance to book publication. We consider that the amount of money necessarily involved in a workable government plan along with the inherent importance of the industry to Canadian cultural life and to education would allow for the creation of an independent agency which would be viable and useful. Furthermore this agency, unlike the Canada Council, will have to deal with commercial loans as well as direct grants to the industry. Finally our researches have persuaded us that the publishing industry has certain unique characteristics which would justify a separate agency to deal with its problems.

   We believe that the structure we suggest will give the maximum independence of government which is vitally important in an area as sensitive as that of book publishing. We suggest that the Board of Directors should be composed of seven people two of whom should be the Director of the Canada Council and the Executive Director of the Science Council of Canada. Since these two men represent bodies with a broad spectrum of interest in the arts and in the sciences, their experience would be of considerable value to the Board. We further believe that the Executive Director of the Corporation should be a non-voting member of the Board in order to ensure proper liaison. We recognize that it is necessary to constitute the Board according to the provisions of section 5 of the Film Development Corporation Act:

   > "No person is eligible to be appointed or to hold office as a member of the Corporation who has, directly or indirectly and individually or as a shareholder, partner or otherwise, any pecuniary interest . . ."

   We conceive of the Board as the guardian of the public interest, as being responsible for the general guidelines to be laid down for the functioning of the Corporation, and as reporting to the Government for the Corporation. But we do not consider that the Board should be involved in the detailed administration of the Corporation.

2. We recommend the creation of the post of Executive Director to be responsible for the day-to-day operations of the Corporation.

3. We recommend that the Board have the authority and the obligation to constitute, for its own use, an advisory committee. All recommendations for loans and grants should be considered by this committee. We believe that it should have strong representation from the book publishing industry, the book selling

industry, the universities, and boards of education along with members to represent the public interest. We assume that if any member has a pecuniary interest in a particular project, he would withdraw from the discussions of the advisory committee. We suggest this two-tier structure because the advisory committee will allow direct representation from the industry which we judge to be absolutely necessary for the effective operation of the Corporation while the Board will represent the public interest and prevent the creation of a publishers' cabal.

4. We recommend that the Corporation be empowered to offer the following assistance to the book publishing industry:

   a) soft loans — The book publishers have made it clear that this is the major item of assistance desired by them. Such loans would help to overcome one of the major and inescapable problems of the industry, namely the amount of money tied up in stock.

   b) assistance in computerization i.e. a centralized, computerized, ordering and inventory service — This would only be feasible if desired by the publishers, but it should be an option open to the Corporation.

   c) development grants and loans — We recommend that the Corporation be empowered to offer development loans or grants to companies which wish to enter new fields, particularly when these are completely or largely dominated by foreign interests. The production of multi-media kits could be one such area.

   d) direct grants — Presently the Canada Council offers $90,000 to assist in the publication of meritorious books (other than periodicals) that would not normally realize immediate commercial returns. We suggest transferring this function to the Corporation and increasing the amount available. (See also section 5 below).

   e) co-operation with the Department of Industry, Trade and Commerce — The Department should be empowered to make block purchases of books for trade fairs and similar purposes and to ensure adequate promotion and better marketing of Canadian books abroad; The Corporation should be empowered to consider the feasibility of a publication similar to "Livres du Mois" for both foreign and domestic distribution, and be empowered to assist, where feasible, in the marketing of Canadian books within Canada.

   f) possible future assistance to the Canadian periodical industry — We understand that the government has considered

such aid particularly in the form of a national book review and we believe that this Corporation would be a useful mechanism for the distribution of such assistance.

g) initiation, if need be, of publication, translation or adaptation of works that appear necessary to Canadian education and culture at all levels and in either language.

Criteria for Assistance

5. We believe that the government must establish criteria for assistance. This is already an accepted policy in many related areas of government such as the Canada Council. We recognize that it does open the door to charges of partiality and government censorship, but we believe that, on the whole, the Canada Council, as one example, has been able to operate with a minimum of such interference, and we hope that the structure we have suggested will create for the Corporation the maximum independence possible consonant with the public interest.

a) **Criteria for soft loans and development grants**

(i) We recommend that soft loans be available for Canadian-owned companies only. To make them generally available would merely encourage the present pattern of the take-over of Canadian firms which the government wishes to control, if not to halt. The definition of Canadian-owned should be consonant with evolving federal government policy in this area but would have to be, at a minimum, that 51% of the equity should be held by Canadians and, to achieve the ends desired by the government, should have some provision on maximum ownership by a single foreign shareholder.

(ii) The second criterion for soft loans should be profitability and good business management. We conceive of soft loans as a mechanism to help Canadian companies become more viable. We do not, therefore, recommend assistance where, owing to deplorable business management, the Corporation would be merely staving off an inevitable collapse. We think loans should also be available on the same terms to non-profit publishers provided that such publishers can show the Corporation that they are soundly managed and that any profits are ploughed back into the business and not used to subsidize other activities as may be the case with university or ecclesiastical publishers.

(iii) The third criterion for soft loans should be a reasonable commitment to Canadian cultural life or to artistic or scientific publication of international standing. The Corporation

will have to evolve the type of evaluating machinery now used by the Canada Council in order to arrive at a fair judgment. This will be the most contentious criterion but there is no escaping it if the government wishes to avoid subsidizing a large pornography industry. Since publishers would presumably be considered for soft loans in terms of their total list, this in itself should be a safeguard against the pillorying of particular books or authors.

(iv) It should be a condition of assistance in the form of loans or development grants that the publisher give the Corporation an assurance that the firm will not be sold to foreign interests during the period of the loan without giving first refusal to the Corporation itself. The Corporation should be empowered, provided financing is available, to buy a controlling interest in such a firm in these circumstances along the lines of the Ontario Government's offer to McClelland and Stewart.

(v) If the government takes a shareholding interest in a book publishing firm, we suggest that it is preferable for the government to be a minority shareholder. Furthermore we believe that the nominees of the government on any publishing board should be citizens who are neither civil servants nor members of parliament. We suggest this to ensure maximum independence consonant with the public interest.

b) Criteria for direct grants

Direct grants are sums of money made available for the publication of specific books. At the moment the Canada Council spends about $90,000 a year in this area. We suggest that this sum should be substantially increased and that these funds should be available to both Canadian-owned and foreign publishers based in Canada. The primary purpose of these grants should be in the direction of the development of Canadian culture but the Corporation should not exclude books of international standing not directly related to Canadian themes. Some foreign publishers based in Canada have a distinguished record in the publication of books related to Canada. This should be encouraged, and we believe this type of subsidy would assist.

Mechanism for considering applications for loans and grants

6. We assume that initial grants will be made according to the present status and future prospects of the firms in the industry.

The loans should cover a reasonable period of time in accord with good business practice. We would expect that established publishers would not have to return to the Corporation each year for a renewal. However, the Corporation should also be interested in new publishing houses, but in a cautious way. The Canada Council insists that new periodicals survive for a time on their own before applying for subsidy. It also gives some grants in installments and demands reports before subsequent grants are offered. Devices similar to these should be considered by the Corporation.

The Canada Council

7. We are conscious of the fact that the functions we are suggesting could be incorporated under the Canada Council. We think that a certain separation of powers in the cultural field helps to dispel suggestions of the central control of culture and is, therefore, beneficial to all concerned provided the separate agencies are significant enough so that they can withstand untoward pressure. We have already suggested that one of the key functions of the Corporation should be in the area of soft loans — a field in which the Canada Council does not have much experience. Nevertheless, if the government decides against an independent agency, then the Canada Council is the alternative we would suggest since it does have wide experience in assistance to the arts and since it has built up an enviable reputation of independence from government pressure.

Information Canada

8. We recommend that on no account should such an agency be part of Information Canada since it is impossible to dispel the belief, however unjust, in some sections of the community that Information Canada is the propaganda arm of the government. Any such belief about a national book development corporation would destroy it at birth.

May 4, 1971

[Signed]
Pierre Couillard, Université de Montréal,
Hugh MacLennan, McGill University,
Kenneth McNaught, University of Toronto,
Donald Savage, C.A.U.T.,
Serge Losique, Sir George Williams University (chairman).

MÉMOIRE de l'A.C.P.U. touchant l'INDUSTRIE de l'ÉDITION

Ce mémoire a été préparé par le Comité de la programmation des études et de la recherche de l'A.C.P.U., établi par le Conseil en mai 1970. Présidé par M. Serge Losique (Sir George Williams) ce comité compte les professeurs suivants: Pierre Couillard (Montréal), Hugh MacLennan (McGill), Kenneth McNaught (Toronto) et Donald Savage (secrétariat de l'A.C.P.U.). Ce document fut remis au gouvernement du Canada le 4 mai 1971 et incorporé dans un mémoire soumis à la Commission royale d'enquête touchant l'industrie de l'édition du gouvernement de l'Ontario.

Préambule

L'Association canadienne des professeurs d'université est un organisme facultatif comprenant environ 16 000 professeurs à plein temps répartis dans quarante-sept universités du Canada.

L'A.C.P.U. croit que l'existence d'une industrie canadienne de l'édition constitue un élément essentiel du maintien de l'identité canadienne. Nous y voyons une analogie avec la préoccupation que le gouvernement canadien a exprimée à l'égard de la radiodiffusion et de la presse. Il va de soi également que l'édition est d'un intérêt primordial pour les universités, tout particulièrement les professeurs et les étudiants.

Nous croyons savoir que le gouvernement fédéral a déjà l'intention de venir en aide à l'édition. Le présent mémoire s'attache donc davantage au mode d'application et aux mécanismes d'un tel projet, qu'à sa justification.

Il ne nous semble pas que toutes les maisons d'édition établies au Canada méritent l'aide de l'État du seul fait qu'elles sont canadiennes. Nous proposons en conséquence des structures et des critères qui, nous l'espérons, aideront le gouvernement à planifier sagement sa dépense de fonds dans ce domaine.

1. Nous recommandons que le gouvernement crée une société semblable à la Société de développement de l'industrie cinématographique, et qu'il la charge au premier chef de l'aide à l'édition. A notre avis, les sommes considérables que supposerait un projet gouvernemental réalisable et l'importance même de cette industrie dans la vie culturelle canadienne et dans l'éducation motiveraient la création d'un organisme indépendant qui serait viable et utile. De plus, à la différence du Conseil des Arts, cet organisme s'occuperait aussi bien de prêts commerciaux que de subventions directes à l'industrie. Enfin, nos recherches nous ont persuadés que l'industrie a des caractéristiques bien à elles qui justifieraient l'existence d'un organisme distinct pour s'occuper de ses problèmes.

   Nous estimons que la structure proposée permettrait un maximum d'indépendance vis-à-vis du gouvernement, ce qui est d'une importance capitale dans un domaine aussi délicat que celui de l'édition. Le Conseil d'administration devrait, à notre avis, se composer de sept personnes dont deux seraient le directeur du Conseil des Arts du Canada et le directeur exécutif du Conseil des sciences du Canada, les autres n'étant ni députés, ni sénateurs, ni fonctionnaires. Comme ces deux hommes représentent des organismes qui ont un large éventail d'intérêts dans les arts et les sciences, leur expérience serait précieuse pour le Conseil d'administration. Nous croyons aussi que, pour assurer une liaison adéquate, le directeur exécutif de la Société devrait être membre du Conseil, mais sans droit de vote. Nous reconnaissons qu'il faut établir le Conseil en conformité de l'article 5 de la loi sur la Société de développement de l'industrie cinématographique:

   > « Ne peut être nommé ni demeurer membre de la Société quiconque, directement ou indirectement, individuellement ou en qualité d'actionnaire ou de partenaire ou à quelque autre titre, détient un intérêt pécuniaire . . . »

   Dans notre esprit, le Conseil d'administration serait le gardien de l'intérêt public, aurait la responsabilité d'établir les directives générales qui assureraient le bon fonctionnement de la Société et répondrait de celle-ci devant le gouvernement. A notre avis, il ne devrait pas, cependant, se mêler des détails de l'administration.

2. Nous recommandons la création du poste de directeur exécutif précisément pour qu'il s'occupe de l'administration au jour le jour.

3. Nous recommandons que le Conseil soit non seulement autorisé mais tenu de se constituer, pour ses propres besoins, un comité consultatif qui étudierait toutes les recommandations de prêts et de subventions. Ce comité devrait comporter une forte représentation des maisons d'édition, des libraires, des universités et des conseils scolaires, en plus des membres qui représenteraient l'intérêt public. Il va de soi que, si l'un des membres avait un intérêt pécuniaire dans un projet quelconque, il se retirerait des discussions du comité consultatif. Si nous suggérons une telle structure à deux paliers, c'est que le comité consultatif permettrait la représentation directe de l'industrie, ce que nous tenons pour essentiel au bon fonctionnement de la Société. tandis que le Conseil représenterait l'intérêt public et préviendrait les intrigues d'éditeurs.

4. Nous recommandons que la Société ait le pouvoir d'offrir l'aide suivante à l'industrie de l'édition:

   a) prêts à conditions faciles — Les éditeurs ont clairement indiqué que telle est la principale forme d'aide qu'ils désirent. De tels prêts aideraient l'industrie à surmonter un problème majeur et inévitable, c'est-à-dire l'immobilisation d'un gros capital sous forme de stocks.

   b) aide à l'installation d'ordinateurs, i.e. un service central de commandes et d'inventaires par ordinateur — L'offre n'aurait de valeur que si les éditeurs désiraient la transformation, mais devrait quand même être une option de la Société.

   c) subventions et prêts d'expansion — Nous recommandons que la Société ait l'autorisation d'offrir des subventions et des prêts d'expansion aux compagnies qui voudraient se lancer dans de nouveaux domaines, surtout lorsque ceux-ci sont totalement ou en grande partie dominés par des intérêts étrangers. La production d'ensembles audio-visuels pourrait en être un exemple.

   d) subventions directes — Actuellement, le Conseil des Arts dispose de $90 000 pour faciliter la publication de livres dignes d'intérêt (autres que des périodiques) qui, normalement, ne rapporteraient pas de bénéfices commerciaux immédiats. Nous proposons que ce rôle soit désormais dévolu à la Société et que le montant disponible à cette fin soit accru. (Voir aussi la section 5 ci-après.)

   e) coopération avec le ministère de l'Industrie et du Commerce — Le ministère devrait être autorisé à acheter des blocs de livres pour les foires commerciales ou autres activités du genre et assurer une promotion adéquate et une meilleure

commercialisation des livres canadiens à l'étranger; la Société devrait être autorisée à étudier la possibilité d'une édition semblable aux « Livres du mois » destinée au Canada et à l'étranger, et à aider, quand c'est possible, la commercialisation des ouvrages canadiens au Canada.

f) assistance éventuelle à l'industrie canadienne des périodiques — Le gouvernement aurait déjà envisagé la possibilité de ce genre d'aide, et nous croyons que la Société que nous proposons pourrait lui servir de véhicule dans ce secteur.

g) s'il y a lieu, tenter de faire publier, traduire ou adapter les ouvrages qui paraissent nécessaires à l'éducation et à la culture, à quelque niveau que ce soit et dans l'une ou l'autre langue.

Critères à envisager

5. Nous croyons que le gouvernement doit établir des critères qui régiront l'application d'un tel régime d'assistance. Telle est déjà la politique établie dans bien des domaines connexes, au Conseil des Arts par exemple. Il est certain qu'en recourant à ce mécanisme le gouvernement s'expose à des accusations de partialité et de censure, mais à tout prendre nous croyons que le Conseil des Arts, pour ne donner qu'un exemple, a pu fonctionner avec un minimum d'ingérence, et nous espérons que la structure que nous avons proposée assurera à la Société le maximum d'indépendance compatible avec l'intérêt public.

a) **Critères pour les prêts à faible intérêt et les subventions d'expansion**

(i) Nous recommandons que les prêts à faible intérêt soient accessibles aux compagnies de propriété canadienne seulement. Ne faire aucune distinction encouragerait tout simplement la tendance actuelle de reprise des sociétés canadiennes par des étrangers, ce que le gouvernement veut contenir sinon enrayer. La définition de « propriété canadienne » devrait être compatible avec la politique fédérale en voie d'élaboration dans ce domaine, mais devrait prescrire qu'au moins 51% du capital-actions engagé appartienne à des Canadiens et, pour atteindre les buts que poursuit le gouvernement, il faudrait aussi prévoir le maximum que pourrait détenir un même actionnaire étranger.

(ii) Le deuxième critère concernant les prêts à faible intérêt devrait être la rentabilité et la bonne administration. Nous concevons ces prêts comme un moyen d'aider les compagnies canadiennes à devenir plus viables. En consé-

quence, nous ne recommandons pas d'aide dans les cas où, par suite d'une mauvaise administration, la Société ne ferait que prévenir un effondrement inévitable. Nous croyons que des prêts devraient également être mis à la disposition des éditeurs sans but lucratif aux mêmes conditions, pourvu que ces éditeurs puissent établir, à la satisfaction de la Société, qu'ils ont une administration solide et que tous les profits sont remis dans l'entreprise et non employés pour soutenir d'autres activités, comme ce pourrait être le cas des éditeurs universitaires ou ecclésiastiques.

(iii) Le troisième critère devrait être un engagement raisonnable dans la vie culturelle canadienne ou dans l'édition artistique ou scientifique d'envergure internationale. La Société devrait se doter d'un mécanisme d'appréciation comme celui qui est déjà en usage au Conseil des Arts pour passer des jugements équitables. Ce critère sera le plus contesté de tous, mais il est inéluctable si le gouvernement ne veut pas subventionner une vaste industrie de pornographie. Comme c'est vraisemblablement en fonction de leur liste globale qu'on jugerait de l'admissibilité des éditeurs aux prêts à taux faibles, on se protégerait du fait même contre la dénonciation de certains ouvrages ou de certains auteurs.

(iv) L'une des conditions à satisfaire pour recevoir de l'aide sous forme de prêts ou de subventions d'expansion serait l'assurance que l'éditeur donnerait à la Société que son entreprise ne sera pas vendue à des intérêts étrangers pendant la durée du prêt et sans que la Société n'ait pu exercer son droit de première option. Si elle en a les moyens financiers, la Société devrait alors être autorisée à acquérir un intérêt majoritaire semblable à l'offre que le gouvernement de l'Ontario a faite à McClelland and Stewart.

(v) Si le gouvernement devient actionnaire d'une maison d'édition, nous croyons qu'il est préférable qu'il soit actionnaire minoritaire. De plus, nous pensons que les représentants du gouvernement au conseil d'administration d'une maison d'édition ne devraient être ni des fonctionnaires, ni des membres du Parlement. Notre suggestion vise à assurer une indépendance conforme aux intérêts du public.

b) **Critères pour les subventions directes**

Les subventions directes sont des sommes accordées pour la publication de livres particuliers. Le Conseil des Arts dépense actuellement environ $90 000 par année dans ce domaine. Cette somme devrait, à notre avis, être considéra-

blement accrue et ces fonds devraient être accessibles et aux compagnies de propriété canadienne et aux maisons étrangères établies au Canada. L'objet premier de ces subventions devrait être la promotion de la culture canadienne, mais la Société ne devrait pas exclure les ouvrages d'envergure internationale sans lien direct avec des thèmes canadiens. Certains éditeurs étrangers établis au Canada se sont distingués dans la publication d'œuvres sur le Canada. Ils méritent encouragement et nous croyons que ce genre de subvention y contribuerait.

Modalités d'étude des demandes de prêts et subventions

6. Nous présumons que les subventions initiales seront accordées d'après l'état actuel et les perspectives des maisons intéressées. Les prêts devraient s'appliquer à une période raisonnable, compatible avec de saines pratiques commerciales. Les éditeurs établis ne devraient pas, estimons-nous, avoir à revenir devant la Société chaque année pour un renouvellement. Il faudrait aussi, d'autre part, que la Société puisse s'intéresser aux nouvelles maisons d'édition, mais avec toute la prudence voulue. Le Conseil des Arts insiste pour que les nouveaux périodiques survivent par eux-mêmes pendant quelque temps avant de demander une subvention. Il accorde aussi des subventions par tranches et exige qu'on lui fasse rapport avant d'accorder d'autres subventions. La Société devrait envisager des méthodes analogues.

Le Conseil des Arts

7. Nous en avons conscience, les fonctions que nous proposons pourraient s'intégrer à celles du Conseil des Arts. Nous croyons cependant qu'un certain partage des pouvoirs dans le domaine culturel contribue à dissiper tout soupçon de mainmise centrale sur la culture, à condition que chacun des organismes soit assez fort pour résister aux pressions indues. Comme nous l'avons déjà suggéré l'un des services-clés de la Société devrait être celui des prêts à faible intérêt, domaine où le Conseil des Arts n'a pas beaucoup d'expérience. Néanmoins, si le gouvernement rejetait l'idée d'un organisme indépendant, le Conseil des Arts serait alors la solution de rechange que nous proposerions, attendu qu'il possède une longue expérience d'aide aux arts et qu'il s'est acquis une réputation enviable d'indépendance.

Information Canada

8. Nous recommandons qu'un tel organisme ne soit, sous aucun prétexte, rattaché à Information Canada, car il est impossible

de dissiper la croyance qu'on a en certains milieux, si injuste soit-elle, selon laquelle Information Canada est l'organe de propagande du gouvernement. Pareille opinion sur une société nationale pour le développement de l'édition la tuerait au départ.

le 4 mai 1971.

[Signatures]
Pierre Couillard, Université de Montréal
Hugh MacLennan, McGill University
Kenneth McNaught, Universiy of Toronto
Donald Savage, A.C.P.U.
Serge Losique, Sir George Williams University (président)

C.A.U.T. MOTION CONCERNING

SIMON FRASER UNIVERSITY

The Canadian Association of University Teachers warns faculty members teaching at Simon Fraser University, or considering appointments there, that the safeguards of academic freedom that can normally be anticipated in Canadian universities do not now exist at Simon Fraser; and furthermore that the continued efforts of C.A.U.T. to establish those safeguards have not been effective.

We cite as the basis for this warning:

1) that the President and Board of Governors of Simon Fraser have refused to administer the university according to accepted norms of good university governance, and

2) that surviving and continuing members of the Department of P.S.A. have assumed power within the department and exercised power in ways inconsistent with achieving justice for their colleagues.

14 May 1970

C.A.U.T. CENSURE of the PRESIDENT and BOARD OF GOVERNORS. [1]

WHEREAS the unanimous decision of a duly established hearing committee was that it was unable to establish just cause for the dismissal of seven faculty members in the P.S.A. Department of Simon Fraser University and that the President therefore could not recommend dismissal; and

WHEREAS the President and Board of Governors have summarily dismissed Dr. Kathleen Gough Aberle and Dr. David Potter after unilaterally setting aside that unanimous decision; and

WHEREAS four other faculty members have had to agree under protest to a second hearing to prevent such summary dismissal; and

WHEREAS a seventh faculty member, Dr. John Leggett, has not been granted a proper appeal on the terms of his appointment although the President revoked the charges against him for dismissal in July on the grounds that Dr. Leggett's contract would expire in any case on August 31, 1970;

BE IT RESOLVED that the Canadian Association of University Teachers censures the President and Board of Governors of Simon Fraser University for their summary dismissal of two faculty members and their improper treatment of five others in disregard of academic due process and of the proper safeguards of academic appointments and tenure.

1. This motion of censure was submitted to Council in November 1970 and was tabled. It was lifted at the May Council Meeting and was adopted.

C.A.U.T. CENSURE of the PRESIDENT of the

UNIVERSITY of VICTORIA

The Canadian Association of University Teachers censures the President of the University of Victoria for the following reason:

Although the mediation of the C.A.U.T. is usually effective in securing equitable settlements of the grievances referred to it, in the cases of three faculty members of the University of Victoria the C.A.U.T. has exhausted all its available means of mediation and yet has failed to secure the agreement of the President of the University of Victoria to the use of equitable procedures in these cases. Specifically, the President

1) has reversed the recommendations of a Faculty Advisory Committee that two faculty members be granted tenure, and the unanimous recommendation of his department that a third faculty member be promoted (and consequently granted renewal of appointment), without providing written reasons and without providing a proper academic appeal to these faculty members;

2) has rejected during a period of more than six months repeated representations from the C.A.U.T. that academic tribunals be established to resolve these cases;

3) has refused to negotiate possible resolutions of these cases with the University of Victoria Faculty Association, even after faculty and student referenda had clearly recorded widespread campus dissatisfaction with the dispositions of the cases;

4) has consistently obstructed and delayed a resolution not only of these cases but of the campus bitterness that has increasingly surrounded them.

The Board of Governors in its turn must bear responsibility for concurring in the actions of the President.

Noting that President Partridge has very recently indicated that he proposes to establish a review panel (the specific nature of which has not been announced), the Council of C.A.U.T. authorizes the Executive Committee to lift censure before the November Council meeting if a resolution of these cases is achieved through acceptable academic procedures. In particular, the terms of reference and procedures of the review should be agreeable both to the President

of the University and to the University of Victoria Faculty Association, and should accord to all parties the rights that normally belong to a fair hearing. In addition, the salaries of the three faculty members should be continued until the review committee has reported, and the Board of Governors has taken a decision.

14 May 1970

LIST OF CENSURED ADMINISTRATIONS

MOUNT ALLISON UNIVERSITY

(27 November 1970)

UNIVERSITÉ DU QUÉBEC

(27 November 1970)

UNIVERSITY OF VICTORIA

(14 May 1971)

SIMON FRASER UNIVERSITY

(14 May 1971) *

* See C.A.U.T. motion concerning S.F.U., p. 60.

THREE CASES at the UNIVERSITY of VICTORIA

Prefatory Note

At its meeting on 27 February the Executive Committee of C.A.U.T. requested the Academic Freedom and Tenure Committee to prepare a summary report on the three cases appealed to A.F. & T. from the University of Victoria. It was agreed at the A.F. & T. meeting of 12 March that the Chairman of the Committee and the Senior Associate Executive Secretary should be authorized to prepare the report and submit it directly to the Executive Committee at its meetings on 2 and 3 April. The report now submitted is based on the following materials: the report dated 1 February 1971 prepared by an ad hoc investigating committee under the chairmanship of Professor D. R. Cherry; comments on that report received from Professor T. C. Jain, Professor W. Goede, Mr. T. Graff, Professor D. Harvey (President of the University of Victoria Faculty Association), and President Bruce Partridge; oral comment from Professor Cherry, Professor Harvey, President Partridge, and Assistant Dean W. R. Gordon at the meeting of the Executive Committee on 27 February; reports from the C.A.U.T. negotiating committee which visited the University of Victoria, 19 March 1971; and a plethora of material in the C.A.U.T. files that has accumulated since our first contact with these appeals in the winter of 1969-70.

General Introduction

The cases appealed to the C.A.U.T. from the University of Victoria call attention to the status of the C.A.U.T. Policy Statement on Academic Appointments and Tenure, and the relation of that statement to local tenure documents. Quite early in our correspondence with President Partridge, he demanded to know if C.A.U.T. was asking him to set aside the University of Victoria Tenure Document and accept the C.A.U.T. Policy Statement in its place, and similar questions have been put to us in the past by presidents of other universities. The answer, of course, is no, but the question itself is instructive because it can only be formulated if the assumption is made that the policy statement and the local document are exhaustive definitions of obligation. C.A.U.T. has never regarded its Policy Statement as an exhaustive definition of obligation, and it sees no reason why local documents need to be so regarded either.

The C.A.U.T. Policy Statement is a declaration agreed on by representatives of the teaching staff at all Canadian universities, setting forth certain procedural

norms in matters of appointment that must be observed, and describing certain patterns of procedure which can safeguard those norms. A local tenure document like that of the University of Victoria does essentially the same things though the procedures called for are not exactly those suggested in the C.A.U.T. Statement. The terms of the University of Victoria document *require* that certain procedures be followed, explicitly allow that certain others may be followed, and implicitly forbid only those procedures that would contradict the *requirements* of the document. Given the large area of discretion allowed by the University of Victoria document it is perfectly feasible for administrative officers and faculty members of that University to observe the norms of the C.A.U.T. Policy Statement without violating the requirements of their own local document. When the C.A.U.T. norms are not met at the University of Victoria, it is not because the local document stands in the way, but rather that one person or another with discretionary power within the University has chosen not to observe the C.A.U.T. norms.

The A.F. & T. Committee does from time to time meet situations in which the local document or statutory procedures do in fact prevent the observance of the C.A.U.T. norms and in such cases considerable ingenuity is needed to devise a reasonable settlement of a particular case pending a revision of the local document or procedures, but this problem has not arisen at the University of Victoria where the only impediment to the observance of the C.A.U.T. norms has been the unwillingness of the President in particular cases to do more than the local document positively requires him to.

University of Victoria Tenure Document

The Tenure Document now in force at the University of Victoria, came out of prolonged negotiation between representatives of the Board of Governors and of the Faculty Association, and was approved by both bodies in the Autumn of 1968. The document contains sections dealing with: Academic Freedom and Professional Ethics; Classification and Definition of Academic Appointments and General Procedures; Procedures to be used in relation to First Appointments, Re-appointments and Promotions; Limitations on Term Appointments; Procedures for Tenured Appointments and Annual Salary Review, Evaluation Criteria; Appeal Procedures and Dismissal Procedures; and finally Resignations, Retirement, Transition, and Review.

Departments may formulate their recommendations according to a number of possible structures (4.1). In matters of reappointment and promotion recommendations are made by the Department to the Dean, and the Department Chairman may, if he wishes, also forward a personal recommendation (4.3). The Dean then makes recommendations on the matter to the President. In cases where the Department recommends non-renewal of the appointment the faculty member is entitled to a statement of reasons. In cases of promotion, where the Department recommends in favour, and the Dean reverses the recommendation, the Dean is not *required* by the terms of the document to offer the faculty member his reasons as he is in the case of non-renewal (6.4).

In tenure appointments the procedure is more elaborate. The Department forwards a recommendation accompanied by one from the Chairman if he chooses. These recommendations are transmitted to the Dean who then passes them on for examination to the elected Faculty Advisory Committee which in due course makes its own recommendation. The recommendation of the Faculty Advisory Committee is transmitted to the President by the Dean and at the same time the Dean is bound to forward a recommendation

of his own (4.4). In the Tenure Procedures the faculty member is entitled to written reasons if the Department proposes to recommend against his receiving tenure (8.5 and 8.6), and is entitled to written reasons and a hearing if the Faculty Advisory Committee proposes to recommend against tenure (8.9), but the Dean is not *required* to offer reasons for his recommendation.

In the case of appointments, promotion, and tenure procedures, the faculty member has the right of appeal to the University Review Committee, a committee consisting of five members elected annually by faculties and schools. The terms of reference of this committee are to determine whether all relevant evidence has been examined and all appropriate procedures properly followed in reaching the evaluation under appeal. It is required that the procedures of the University Review Committee be consistent with the rules of natural justice (11.3).

An important feature of the appointment procedures set out in the University of Victoria Document is that while consultation in one form or another at the department level, and deliberation by an elected committee of academics at the faculty level (in the case of tenure and senior appointments) are both required, there is also provision for recommendations from the Department Chairman himself to the Dean, and recommendations from the Dean to the President. The relation between these channels of recommendation — Department and Faculty Advisory Committee on the one hand, Chairman and Dean on the other — is not precisely defined in the Document but is nevertheless of critical importance. Under the terms of the B.C. Universities Act all appointments are made by the Board on recommendation from the President so it is quite clear that the President must act on all appointment recommendations from whatever source. There is substantial evidence in the cases described later in this report that the President of the University of Victoria takes this view, that appointments are primarily an administrative responsibility, that the recommendations from Department Chairman and from the Dean are primary, and that the recommendations from a departmental committee or from the Faculty Advisory Committee are merely advisory to the corresponding administrative officer. If on the other hand, academic appointments are thought properly to be the responsibility of academic committees, then the judgments of a department and of the Faculty Advisory Committee will be considered paramount, and the personal recommendations from Departmental Chairman and Deans, supplementary. In this view, the function of the chairman's personal recommendation, on a matter of tenure, would be to call to the Dean's attention something that might have escaped the Departmental Committee and which the Chairman feels should be placed before the Faculty Advisory Committee. The Dean's personal recommendation likewise would be a means of calling to the President's attention some matter that he feels is not fully set forth in the recommendations from the Faculty Advisory Committee or some irregularity of procedure. In this perspective, the President's role, if he is not satisfied to transmit the recommendation of the Faculty Advisory Committee to the Board, would be to refer the matter back to the Faculty Advisory Committee together with his own representations for a further consideration. In such circumstances the President would inform the faculty member of his unwillingness to transmit the recommendations together with his reasons. And if the President were still dissatisfied with the Committee's recommendation, his proper role would be to establish an academic board to whom he could put the matter for adjudication. This second view of the parallel channels of recommendation at the University of Victoria represents in general the C.A.U.T. position, and does not contemplate a situation in which the president

could on his own decision reverse or block permanently a tenure recommendation from a competent academic committee.

If any criticism is to be made of the University of Victoria Tenure Document it should be made not so much of the provisions of the Document itself as of the way in which the Document seems to have been interpreted in practice. In the cases under appeal, the University Review Committee appears to have understood its function in the rather narrow sense of determining whether all the *required* procedures have been followed in some pro forma way in a given case. But, there may be "appropriate procedures" (11.3) beyond those that are merely required by a literal reading of the document, and there is no reason why the University Review Committee should not make this judgment concerning appropriateness. Again, the Faculty Advisory Committee, though charged specifically with responsibility for recommendations for appointment, reappointment and promotion to the rank of Associate Professor and Full Professor, and for tenure, is not barred by any terms of the document from acting as an appeal committee in matters of reappointment or promotion at a lower rank. The Advisory Committee in the Faculty of Arts and Science appears to have restricted its role to that *required* of it by article 4.4 of the Tenure Document, and so there was no committee available to review the substance of the third case described in this report, and as a consequence the review that was called for by the U.R.C. had to be carried out by the same administrative officer who had originally reversed the departmental recommendation in the case. There seems nothing to prevent the U.R.C. and the Faculty Advisory Committee from taking a wider view of their powers and, if they were to do so, the provisions of the University of Victoria Tenure Document would certainly be more fully exploited.

The Case of Dr. T. C. Jain

Dr. T. C. Jain, an Assistant Professor in the Department of Chemistry at the University of Victoria, applied to his Department for tenure on 31 March 1969. On 29 May Professor S. A. Ryce, the Chairman of the Department, replied to Professor Jain that the Department's provisional intention was to recommend against the granting of tenure, and wrote again to Professor Jain on 5 June citing incompatibility. In response to a request from Professor Jain, Professor Ryce wrote to him again on 22 August elaborating the reasons and quoting the opinions of tenured members of the Chemistry Department to the effect that the continued presence of Professor Jain in the Department would constitute a serious disruption of teaching and of scholarly activity. On 27 October 1969, Professor Jain wrote to Professor Ryce and to Dr. J. L. Climenhaga, the Dean of Arts and Science, disputing at length the allegations recorded in Professor Ryce's letter of 22 August. On 12 November Professor Ryce wrote to Professor Jain informing him that the provisional intention of the previous spring had been confirmed and that the Department's decision was to recommend that tenure not be granted, and on 9 December he transmitted to Dean Climenhaga the departmental recommendation, with a copy to Professor Jain which included copies of the statements of the members of the Department. By mid-December 1969 both Dean Climenhaga and the chairman of the Faculty of Arts and Sciences Advisory Committee were evidently anticipating that Professor Jain would appeal the charges of incompatibility before the Advisory Committee. Dean Climenhaga wrote to the University solicitor asking for opinions on such matters as the definition of natural justice and the nature of the hearings that should be offered to Professor Jain before the Advisory Committee; and he received a reply

shortly afterwards. On 14 December Professor W. R. Gordon, Assistant Dean of Arts and Science, wired the Executive Secretary of C.A.U.T. on behalf of the Chairman of the Faculty Advisory Committee seeking the C.A.U.T. understanding of the term "fully documented" as it appears in section 10.5 of the University of Victoria Tenure Document; on 15 December the Executive Secretary spoke to Dean Climenhaga on the matter and confirmed the telephone conversation by a letter of the same date.

On 20 January 1970 Dr. J. J. Gow, representing Professor Jain appealed to the University Review Committee for a review of the case, and on 6 March appeared before the Committee and made submissions on Professor Jain's behalf. On 9 March Professor G. N. Hobson, Chairman of the University Review Committee, wrote to President Partridge (pursuant to section 11.4 of the Tenure Document) reporting that the Committee had reached the unanimous decision that all relevant evidence had been examined by the Department of Chemistry in the matter of Professor Jain and that all appropriate procedures had been properly followed. On 12 March Dr. Gow wrote to Professor Hobson requesting that a transcript of the hearing before the University Review Committee be sent to the Faculty Advisory Committee, and wrote on the same date to Dean Climenhaga advising him of the request to Professor Hobson. On 12 March also, President Partridge replied to Professor Hobson accepting the report of the University Review Committee. Again on 12 March 1970 Dr. Gow wrote to Professor L. I. Bakony, then President of the local Faculty Association, asking that the Association maintain a watching brief on the proceedings in Professor Jain's appeal. On 16 March Professor Hobson replied to Dr. Gow informing him that transcripts of proceedings before the U.R.C. were being prepared. On 31 March Professor Ryce met with the Faculty Advisory Committee, and on 6 April forwarded further material to the Committee concerning Professor Jain.

On 9 April 1970 Dean Climenhaga wrote to Professor Jain reporting that the Faculty Advisory Committee proposed to recommend against the granting of tenure, and reminding him that he had a right to meet with the Committee to discuss the reasons before the Committee made its formal recommendation. On 14 April Dr. Gow wrote to Dean Climenhaga requesting that written reasons for the proposed recommendation be given to Professor Jain, and informing Dean Climenhaga that Professor Jain intended to exercise his right of appeal to the Faculty Advisory Committee. The Committee, however, instead of suplying reasons immediately, decided to meet again first, and at a meeting on 28 April reversed itself and recommended that tenure be granted to Professor Jain, a recommendation that was reported to Professor Jain through a letter from Dean Climenhaga to Dr. Gow of 30 April. Professor Jain heard nothing further on the matter of his application for tenure until he received a very brief memo from Dean Climenhaga dated 19 May suggesting that the two meet to discuss several unnamed "points," and indicating that he had not yet forwarded to President Partridge either his own unfavourable recommendation on Professor Jain's tenure or the favourable recommendation of the Faculty Advisory Committee. An exchange of memos between Professor Jain and Dean Climenhaga failed to elicit what Dean Climenhaga's "points" were, and the meeting never took place. On 22 June President Partridge wrote to Professor Jain telling him that he had decided not to recommend tenure to the Board of Governors, and declaring that therefore the academic year 1970-71 would be Professor Jain's terminal year of appointment at the University of Victoria. On 7 July Dr. Gow wrote to President Partridge disputing the validity of his actions and decisions in the matter of Professor Jain's application for tenure, and on the same day

Dr. Gow wrote to the Secretary of the Board of Governors enclosing a letter from Professor Jain requesting that the Board make a formal decision granting him tenure. On 27 July the Secretary of the Board wrote to Dr. Gow reporting the actions of the Board at a meeting of 20 July in which the Board had resolved that inasmuch as the President of the University had not recommended tenure for Dr. Jain and inasmuch as Dr. Jain had requested the Board of Governors to make a decision granting him tenure, the Board had agreed, determined, and decided that Dr. Jain should not be granted tenure.

In considering so long and complex a series of events as those chronicled above, it is more important to distinguish what has happened than to attempt to explain why the events occurred as they did. What happened essentially in the case of Professor Jain is that after applying for tenure, he was denied tenure by the President without being offered reasons for the President's decision and without being afforded the opportunity to speak to those reasons before a final decision was made. A tenure decision was reached in a manner flatly at variance with the procedures outlined in the C.A.U.T. Policy Statement. C.A.U.T., recognizing that the conferring of tenure is likely to be the most important step in the relations between the university and the faculty member, calls for a number of safeguards to be observed, and asserts specifically that the decision on tenure should be the responsibility of a committee established by elective procedures. It states further that if such a committee proposes to deny tenure, it should give the candidate a right to meet with the committee and discuss the reasons. C.A.U.T. anticipates that there will be representations made to such a tenure committee by the department concerned, that the views of members of other departments will be represented on the committee, that the views of the department head and dean concerned will also be represented on the committee; and it in no way excludes the possibility that representations may be made to the tenure committee from such other quarters in the university as students or the president. But it does assert that the decision belongs to the committee.

We must assume, in the absence of any evidence to the contrary, that the Faculty Advisory Committee reached its final resolution to grant tenure to Professor Jain in the full knowledge of all the elements in the case. We know that the Chairman of Professor Jain's department met on at least one occasion with the Committee and subsequently submitted material to it; we know that the full transcript of the hearing before the University Review Committee was available to the Committee; we know that at least by the beginning of March President Partridge was aware of the appeal being made by Professor Jain (Hobson to Partridge, 9 March 1970) and therefore could have made representations himself to the Committee if he had wished; we know that there was ample time even after the recommendations from the Faculty Advisory Committee had been forwarded to the President, for the President to make further representations to the Committee and to ask it to reconsider its decision; we know from his statements to the C.A.U.T. Executive on 27 February that President Partridge has not challenged the regularity of the proceedings in the Faculty Advisory Committee. We must therefore conclude that President Partridge in reversing the decision of the Faculty Advisory Committee was setting his executive authority in opposition to the academic judgment of a committee specifically charged (8.2) with the responsibility for tenure decisions. A university president exercises his authority in a wide range of matters; but he exercises it improperly when he reverses (without appeal) a decision from an academic appointment and tenure committee. If a president feels that he cannot in good conscience transmit

a decision to the Board, it is perfectly within his discretion to establish (in consultation with the committee) some academic tribunal to adjudicate the matter. It is no answer for President Partridge to declare that the local Tenure Document does not forbid him to act as he did, nor to assert that the Tenure Document does not require him to give Professor Jain reasons for his action.

The Case of Dr. William Goede

Dr. William Goede, an Assistant Professor in the Department of English, applied for tenure in April 1969. On 15 May Professor Goede received a letter from the Chairman of his Department, Professor R. F. Leslie, informing him that it was not the intention of the Department at that time to recommend that he be granted tenure. Professor Goede construed the letter to mean that the Department provisionally intended to recommend against tenure, and on 17 May wrote to Professor Leslie asking for the reasons (per 8.5 of the Tenure Document). Subsequent correspondence involving Professors Goede, Leslie, and Professor L. I. Bakony (then President of the local Faculty Association) established more precisely that the Departmental Committee had made no decision at all, and therefore it followed in the rigour of logic that it was not the provisional intention of the Department to recommend that Professor Goede be granted tenure. Later in the summer the Departmental Committee made a further attempt to come to a decision; and whereas the eight members of the committee had abstained en masse from a decision in May, on the second attempt only seven members abstained, and the eighth cast a vote in favour of recommending tenure. This vote represented the provisional recommendation of the Department (albeit several months later than required; see 8.5). In the autumn of 1969 a newly elected Department Committee took office. On 12 November the Chairman of the Department wrote to Professor Goede informing him that the Department had decided to recommend to the Faculty Advisory Committee that he be granted tenure, with effect from 1 July 1970. In early December a Departmental Recommendation Form was submitted to the Dean, recording a vote of 5 to 1 (with 2 abstaining) in favour of tenure for Professor Goede. This vote is curiously described by President Partridge as follows: "In the Fall, the newly elected Departmental Committee split on its recommendation... recommending for tenure by a narrow margin" (Partridge to Berland, 19 February 1971). On 15 December Professor Leslie transmitted to Dean Climenhaga his personal recommendation on Professor Goede's application. Subsequently the Faculty Advisory Committee recommended that Professor Goede be granted tenure, and that recommendation was transmitted to President Partridge by Dean Climenhaga, together with the Dean's own recommendation against tenure. On 21 May 1970 President Partridge wrote to Professor Goede that the President had concluded that he could not in good conscience recommend tenure to the Board. On 28 May Professor Goede wrote to the President asking the reasons for his decision. On 19 June President Partridge replied, declining to offer reasons. On 22 June Professor Goede wrote to the Chairman of the University Review Committee, objecting that the President had not offered him reasons for the denial of tenure, and asking the Committee to review all relevant aspects of his case. On 30 July 1970 the University Review Committee reported to President Partridge that it had considered the appeal and reached the unanimous decision that all relevant evidence had been examined, and all appropriate procedures properly followed. On 3 August the President wrote to the Chairman of the U.R.C.

accepting the findings of the Committee and stating that therefore the decisions originally taken would remain unchanged.

Again, as in the Jain case, what happened essentially is that after applying for tenure, Professor Goede was denied tenure without being offered reasons for the decision, and without being afforded the opportunity to speak to those reasons before a final decision was made. The critical issue is the same as that in the Jain case, namely that the President took it upon himself to reverse the decision of an elected committee charged with the responsibility for tenure decisions (8.2), and gave the faculty member involved no mechanism to appeal the reversal.

In certain respects, however, the case is clearer than that of Professor Jain. In the case of Professor Jain the recommendation of the Department had been against tenure, whereas the final recommendation of the Faculty Advisory Committee was for tenure. In the case of Professor Goede, both the Departmental and the Advisory Committee recommendations were favourable. The Dean's recommendation was against tenure, and it is theoretically possible that the Chairman's recommendation was also unfavourable.[1] If the recommendations of the two lower administrative officers were at variance with the recommendations of the two academic committees, and the President thus chose to follow the recommendations of these officers and set aside the recommendations of Professor Goede's academic colleagues, then the Goede case shows not only a presidential reversal of the decision of an elected committee charged with the responsibility for tenure decisions, but also shows clearly President Partridge's preference for administrative rather than academic judgments in matters of appointment. The treatment of Professor Goede is an obvious threat to the working of academic appointment committees at the University of Victoria.

As in the Jain case, the presidential action is flatly at variance with the C.A.U.T. Policy Statement touching tenure. Alternative actions were available to President Partridge if he had serious doubts about the recommendation of the Faculty Advisory Committee. The action he took was not forced on him either by the local tenure document or by the B.C. Universities Act.

The Case of Mr. J. P. Graff

Mr. Graff, who has a B.A. in Philosophy from Yale and an M.A. in Philosophy from the University of California (Berkeley), is working on a doctorate at the University of California. As Lecturer at the University of Victoria he has taught freshman, senior undergraduate and honours classes.

On 13 November 1969, the Head of the Philosophy Department, Dr. K. W. Rankin, wrote to Dean Climenhaga, "I forward a strong and unanimous recommendation from the Philosophy Department that Mr. J. P. Graff should be promoted to the rank of Senior Lecturer."

The University of Victoria Tenure Document defines the rank of Senior Lecturer as follows:

> 3.6 Appointment at the rank of Senior Lecturer would normally require a Master's degree or its equivalent achievement. Appointment to this

1. "Theoretically" possible, although we cannot in reason conclude that the Departmental Chairman's personal recommendation was unfavourable: it seems inconceivable that a Chairman who voted in favour of tenure on the Departmental Committee when there would have been a strong majority even without his vote, would several days later have forwarded a personal, unfavourable recommendation to the Dean.

rank shall require a demonstrated record of distinguished teaching or applicable related professional experience. The requirements of research and publication applicable to the professorial ranks shall not apply. However, a person holding the rank of Senior Lecturer may at any time qualify for promotion to a higher rank by meeting the additional criteria appropriate to the professorial ranks.

Section 6.7 of the Tenure Document states:

A regular full-time Lecturer shall be reviewed for promotion to the rank of Assistant Professor not later than his fourth year of service at this rank, or to the rank of Senior Lecturer where such a position has been established. However, recommendations for promotion may be initiated at any time.

Section 7.1 of the same document states:

The maximum period of service at the rank of regular full-time Lecturer shall not exceed five years. This rank shall not carry tenure.

Thus if a Lecturer is not promoted to Assistant Professor or Senior Lecturer by the end of his fifth year of service he may no longer continue at the University.

In March of 1970 the Board of Governors at the University of Victoria made the following policy statement regarding the establishment of the position:

A position of Senior Lecturer may be established by the Board of Governors in a Department (or Faculty) upon recommendation initiated by the Department Head or Chairman after consultation with the members of the department and endorsed consecutively by the Dean and the President. The establishment of the position will be considered where:

a) the Department offers courses which are primarily intended to develop basic skills and concepts in the discipline and the discipline of the department is so sequentially structured that the results of scholarship are unlikely to influence the teaching of these basic skills and concepts, and

b) it is demonstrable that these basic skills and concepts can be taught as effectively by Senior Lecturers as by active scholars, and

c) the Department needs to offer at least as many sections of these courses as would occupy the full time attention of at least one Senior Lecturer.

At the 14 April meeting of the Faculty Association the Association voted to amend the statement to include:

d) where the Department wishes to retain through promotion someone of scholarly ability who is thoroughly qualified to teach at least at any undergraduate level, but who, for lack of a doctorate or publications, fails to qualify for promotion to Assistant Professor.

The Board, through the President, subsequently stated that this policy statement was not negotiable. The Faculty Association does not agree with this opinion. It believes the Board's policy statement to be contrary to the intent of the Tenure Document. Furthermore, the Board of Governors has never set the criteria for the establishment of any particular rank and the Faculty Association holds that it should not do so without negotiation.

The establishment of the position of Senior Lecturer and appointment at or promotion to this rank is initiated by the Department. This two-fold recommendation is passed to the Dean, then to the President and ultimately to the Board of Governors. Such a two-fold recommendation for Mr. Graff was made by the Department Head with the unanimous backing of the Department in December 1969. Dean Climenhaga replied that "I... cannot... recommend the position of Senior Lecturer for your department." He did so on the grounds that the academic needs of the Philosophy Department did not call for such a position.

Dr. Rankin sought clarification from the President of the Faculty Association on the criteria for establishment of the position. He subsequently received the stated opinion that "There can be two possible reasons for the creation of the position of the Senior Lecturer:

1) the necessity to fulfil a need in a department, and

2) the desire to keep on faculty a person of unusual teaching ability, who may not fulfil the usual requirements for an academic position (i.e. completion of Ph.D.)."

Four faculty association members involved in the writing of the Tenure Document helped the local association to draft this opinion.

Following receipt of Professor Rankin's letter, the Dean interviewed Mr. Graff in the presence of the department chairman and was informed by Mr. Graff that he was not at that time working on his thesis. Since the administration has taken the view that the refusal to appoint Mr. Graff was made because the university did not think that the demand by the department for a Senior Lectureship was justified according to the university's interpretation of the Tenure Document, it is difficult to understand why the question of Mr. Graff's degree was raised by the Dean at all. It is clear, however, that the department made its unanimous recommendation largely on the ground that Mr. Graff was an especially successful teacher and the retention of such faculty was, in their view, and also in the view of the faculty association, one of the reasons for the creation of the post of Senior Lecturer.

Since failure to promote Mr. Graff to the post of Senior Lecturer would automatically result in the non-renewal of his contract owing to provision 7.1 of the Tenure Document and since the department judged Mr. Graff to be a very competent member of the department, it unanimously agreed to recommend that Mr. Graff be promoted to an assistant professorship. On 19 January 1970, Dr. Rankin wrote to Dean Climenhaga: "I forward a strong and unanimous recommendation from the Philosophy Department that Mr. Graff be appointed to the position of Assistant Professor... As I have remarked on another occasion, to force out a man of his intellectual and personal qualities by not according him promotion would be an extravagance which this University cannot afford." Dean Climenhaga transmitted the department's favourable recommendation to President Partridge, and his own recommendation against promotion for Mr. Graff; the Tenure Document did not require him to notify Mr. Graff of his negative recommendation, nor did he do so. He did not interview Mr. Graff concerning these reasons and, in particular, did not request from Mr. Graff any information concerning his thesis which Mr. Graff by then had recommenced. From January to May there was no further official communication to Mr. Graff. On 19 May 1970, President Partridge wrote to Mr. Graff: "I cannot... recommend to the Board of Governors that you be promoted to the rank of Assistant Professor." The Board of Governors met on the same day.

On 28 May 1970, Mr. Graff wrote to President Partridge to request "... the reasons for your negative decision." On 1 June, President Partridge replied:

> "In cases involving recommendations for promotion or non-promotion the Tenure Document does not provide that the recommendations of the Dean be released, nor that reasons be given for the decisions of the Dean and the President.
>
> There has been a tendency on the part of some of our colleagues, to take what seems to be an excessively legalistic approach to the application of the Tenure Document. For that reason, as President, I am constrained to adhere strictly to the exact terms of the Document, and must decline your request that you be informed of the nature of the Dean's recommendation and of the reasons for the decision."

On 9 June 1970, Mr. Graff wrote to the Chairman of the University Review Committee to register an appeal against the President's recommendation. On 31 July 1970, the Chairman of the University Review Committee wrote to President Partridge: "It is the unanimous recommendation of the Review Committee that Mr. Graff be reconsidered for promotion to the rank of Assistant Professor for the following reasons:

> 1. Mr. Graff did not make clear to Dean Climenhaga that he intended to complete his dissertation. He now states that he expects to finish his thesis before June 1972.
>
> 2. Dr. Rankin has continued to support Mr. Graff without reservations despite negative decisions by the university.
>
> 3. The Review Committee has received five letters, including one from Mr. R. R. Jeffels, Director of Admissions, testifying to Mr. Graff's teaching excellence and other contributions as a faculty member, and the others from students.
>
> 4. Consideration of Mr. Graff's promotion to the rank of Assistant Professor may have been jeopardized by the controversy over the position of senior lectureship."

On 3 August 1970, President Partridge wrote to the Chairman of the Committee: "... I am asking Dean Climenhaga to review such additional facts which the Review Committee places at his disposal ... there is apparently considerable difference of opinion as to Mr. Graff's performance and ability as a teacher ..." On 14 October 1970, President Partridge wrote to Mr. Graff: "The Dean has now completed his review of the additional information and has formally reported to me ... it has now been decided that objective review of the additional information does not constitute evidence sufficient to warrant a reversal of the University decision previously reported to you. Consequently, the University decision remains unchanged ... your appointment for 1970-71 is a terminal appointment."

On 16 October, Mr. Graff wrote to President Partridge requesting the reasons for the denial of promotion. On 30 October, President Partridge replied: "I would be glad to arrange for you to meet with your Department Chairman, your Dean, and me, to discuss on a 'without prejudice' basis, your reactions to the decision not to promote you to Assistant Professor." On 10 November, Mr. Graff replied to President Partridge: "I am quite familiar with my 'reactions' to the decision not to promote me, but I still do not know the reasons for it. Accordingly, I do not wish therapy, just an explanation." On

the same date Mr. Graff appealed to Professor Donald Harvey, President of the Faculty Association.

Dean Climenhaga told the Cherry Committee that Mr. Graff's case had been fully examined, and that no injustice had been done to him. President Partridge told the Committee, and subsequently reiterated to the C.A.U.T., that although the Department was unanimous in its recommendation, there were substantial reasons for the President's decision which he refused to discuss with the Committee because he considered that only procedural matters should be discussed.

Nevertheless, despite the refusal of the President and Dean to give reasons, one reason was offered subsequently to the C.A.U.T. Executive by President Partridge, namely that it was mandatory for Mr. Graff to secure a Ph.D. before he could be promoted.

It is normal practice at the University of Victoria for Lecturers who have not yet completed their Ph.D. to receive contracts which state that on the completion of that degree they will be promoted to Assistant Professor. It has been suggested, however, by President Partridge that this implies that such individuals contract to complete their Ph.D.'s and must do so to qualify for promotion to Assistant Professor. This is not so. The University policy is not to appoint an individual holding a doctorate at a rank lower than Assistant Professor. Furthermore, the Tenure Document specifically states in Section 3.8: "Without interfering with the requirements stated in 3.5, 3.6, and 3.7 above, the level of Academic rank assigned by appointment or promotion, as determined by each department, faculty or school, shall depend on general qualifications, experience, and performance, and shall not relate in every instance to the completion of any specific degree." The University does, in fact, make appointments above the lecturer level without requiring the Ph.D., as it is perfectly entitled to do. Furthermore, the University Review Committee, considering Mr. Graff's case, stated the following observations on 31 July 1970:

> 1. Completion of the Ph.D. is not a necessary condition for promotion to the rank of Assistant Professor (Section 3.8, Tenure Document).
>
> 2. A commitment by the University to promote a faculty member upon completion of a degree does not imply that promotion will necessarily be withheld until completion of the degree.

The story of Mr. Graff's difficulties with the university is involved in detail but rather simple in substance. His Department believes that he should be promoted and has twice so recommended unanimously. On the face of it, this case involves failure to promote. Considered only on these grounds, the C.A.U.T. procedures are clear:

> A faculty member who believes that he has been unreasonably denied a promotion or an increase in salary or both should be entitled to appeal to the Dean of his faculty, who should forthwith invoke a Tenure Committee to report on the matter in the manner described in Section A.

But, in fact, this is also a case of the non-renewal of a contract since failure to promote automatically means non-renewal. Again the C.A.U.T. Policy Statement is clear:

> The length and conditions of initial and subsequent probationary appointments should be clearly stated in writing. Proper consideration of the renewal of a probationary appointment should be assured through clearly

defined and well-publicized procedures. The decision of a department on renewal should be made with proper consultation on a systematic basis, preferably through an elected departmental committee. The faculty member should be advised when a review of his appointment is to take place, and he should be given the opportunity to present written or oral evidence. The candidate should be given reasons in writing for non-renewal if he requests them. It should be understood that such reasons might include consideration of budgetary and departmental needs as well as of the specific qualifications of the individual concerned. Suitable provision for appeal should be available. Normally an appeal from a recommendation of non-renewal should be based either on a failure to follow proper procedures or on evidence of bias or inconsistency in the grounds for the recommendation.

Throughout 1970 and the early part of 1971, President Partridge refused to give reasons for the decision of the Dean or of the President. He was not bound by any part of the Tenure Document to refuse such reasons. He can, on this matter, exercise presidential discretion. He chose to exercise that discretion in a manner that was directly contrary to the policies of the C.A.U.T.

The C.A.U.T. Involvement in these Cases

The C.A.U.T.'s first connection with these cases was in December 1969 when the Assistant Dean of Arts and Science wired the Executive Secretary of the C.A.U.T. for information to clarify a section of the Victoria Tenure Document. In March 1970, the Faculty Association was asked to maintain a watching brief in the Jain Case. A similar request was made to the C.A.U.T. The Executive Secretary wrote Dean Climenhaga on 16 March 1970 to say that "The C.A.U.T. Committee on Academic Freedom and Tenure is concerned that Professor Jain... be assured a fair hearing before the Faculty Advisory Committee and that he be given a full opportunity to examine the evidence on which a charge of incompatibility is based." The case then proceeded through the local channels noted above until, in late July, Professor Jain received notice that the Board of Governors had rejected his appeal. 10 August 1970, Professor Jain formally appealed to the C.A.U.T., and he and his lawyer, Dr. Gow, supplied the national office with some three hundred documents in the case.

On 1 September 1970, the President of the Faculty Association phoned the national office to say that the Executive of the Faculty Association was considering taking up the case. Professor Harvey expressed the hope that an internal solution might be found perhaps through an extension of the practice of arbitration which already existed in the Tenure Document in the section dealing with dismissal for cause. It was agreed that both the national office and the local association would make representations to President Partridge in this sense. On 8 September 1970, Professor Berland, the Executive Secretary, wrote to President Partridge saying, in part: "In reversing the decision of the Faculty Advisory Committee as President it seems to us that you have denied Dr. Jain the right of a hearing and of a more substantially documented case for incompatibility. Indeed, your own denial of tenure gives no reasons at all, so that it is unclear whether that denial is based on the earlier (and unsubstantiated) charge of incompatibility, or on some other and unstated, ground." The letter went on to state that the Committee on Academic Freedom and Tenure "...does not believe this procedure conforms to the spirit of either the University of Victoria Tenure Document or of its own guidelines," and

requested a proper hearing. On 16 September, Professor Harvey wrote to President Partridge to request arbitration in the cases of Professor Jain and Goede to which the President replied on the 30th refusing to comment on either of the cases. On 5 October, Professor Harvey reiterated to the President his hope that these questions could be settled internally on the University of Victoria campus by agreement on some form of arbitration. On 29 September, President Partridge replied to the C.A.U.T. by raising a series of questions including the statement that "for the University to make a responsible answer, we must know what allegations Dr. Jain has made..."

On 7 October, Professor Berland replied in a four-page letter detailing the complaint including reference to the failure of the department to accord Professor Jain a hearing and the failure of the Faculty Advisory Committee to do the same. "Furthermore," he wrote, "we would remind you that since the University Review Committee expressly refrained from discussing the merits of the case, the merits or otherwise of Dr. Jain's appeal have not been reviewed by any official body according to the procedures recommended in the C.A.U.T. Guidelines." On 3 November, the President replied stating, among other matters, that "...it is only fair for the University to be advised by C.A.U.T. of specific allegations made by Dr. Jain." The President also raised the question of the precedence of the C.A.U.T. over the Victoria Tenure Documents and demanded to know whether Professor Berland spoke "for the C.A.U.T. as an Association, for some group within the C.A.U.T., or for yourself or others..." and whether the reaction of the C.A.U.T. was a formal position or an off-hand comment.

Meanwhile on 28 September 1970, Professor Goede had formally appealed to the C.A.U.T. On 19 October, Professor Savage, Associate Executive Secretary, wrote to President Partridge telling him the substance of Professor Goede's complaint, namely that he had received neither reasons for the decision nor the opportunity of a hearing. The letter then reminded the President of Section A.8 of the C.A.U.T. Policy Statement which states that in tenure cases:

> If the committee proposes to recommend that tenure be denied, it should, before making a formal recommendation, so notify the candidate in writing and give him a written statement of the reasons for the proposed recommendation. The candidate should then have the right to meet with the committee and discuss the reasons, before a recommendation is arrived at. The recommendation so reached should be final.

Professor Savage then asked for the President's comments on the case. The President replied on 28 October without any comments on the Goede case and demanding to know what regulations of the University of Victoria had been broken and whether the C.A.U.T. contended that the regulations of the C.A.U.T. had precedence on those adopted locally. Professor Berland replied on 5 November in a letter which was concerned with the cases of both Professor Goede and Jain:

> The C.A.U.T. does not in any way question the right of universities to adopt legislation on their own behalf in relation to appointment, tenure, non-renewal and dismissal. The C.A.U.T. is, however, a professional organization made up of member associations including the Faculty Association of the University of Victoria, and is charged by its constituent members with elucidating and defending within the academic community proper norms of academic behaviour, particularly in relation to matter of contract and of academic freedom. To this end we have drawn up a set of Guidelines which were unanimously approved by the representa-

tives of all the faculty associations in Canada. These Guidelines were not, therefore, unilaterally promulgated, in the pejorative sense that you use, but adopted after wide discussion throughout the country. As a consequence of these Guidelines, the National Office of the C.A.U.T. is charged by its membership with ensuring that universities conduct their procedures in accord with these norms, always bearing in mind the need to examine special cases and circumstances which may arise.

Professor Berland then suggested that the University of Victoria should consider reform of its tenure procedures along the lines recommended by the C.A.U.T., grant as a matter of equity *ad hoc* procedures in the cases of Professor Goede and Jain, and meet with a member of the C.A.U.T. sometime at President Partridge's convenience.

In early November the Academic Freedom and Tenure Committee met and passed the following resolution:

> Whereas reasonable doubt has been raised concerning the procedures denying tenure to Professor Goede and Professor Jain and whereas there has not been a reasonable resolution of these doubts, be it resolved that a formal committee of inquiry be established to inquire into the circumstances surrounding the denial of tenure to Professors Jain and Goede.

This resolution was held in abeyance in the hope that a less formal solution might be found. Meanwhile on 10 November, Professor Graff appealed to the local association and on 1 December repeated this to the C.A.U.T. On 14 December, Professor Berland called the President, discussed the cases with him, and told him that the C.A.U.T. would prefer to send a negotiator from the national office but, if that proved impossible, it would have to create a committee of enquiry. The President again asked for the basis of the appeals and urged the primacy of the Victoria document. On the same day the President replied to Professor Berland's letter of 5 November rejecting any *ad hoc* procedure for the professors concerned, asking for the answers to his previous letter, and agreeing to meet with the C.A.U.T. to discuss the different perspectives of the two parties but refusing to enter into negotiations with the C.A.U.T. On 22 December, Professor Berland summarized the position once again and stated in part:

> "The regulations do not give the President the right of arbitrary rejection of the decision of the Faculty Advisory Committee. Surely every safeguard provided in the regulations — the right to appear on one's own behalf and the right to receive stated reasons — are rendered meaningless if the President can revoke a recommendation for tenure and at the same time put aside those safeguards. The regulations are meant to protect against arbitrariness without necessarily challenging the integrity or good will of any department chairman or dean; it is not consonant with the spirit of your regulations or of our Policy Statement then to allow the President to set aside those protections. If the President may set them aside, then the regulations assure academic due process to no one at the University of Victoria.
>
> In our telephone conversation you suggested that the Faculty Advisory Committee had reversed itself when it recommended tenure for Dr. Jain by a slim majority only (if I remember your phrase correctly), and then only because of the possibility of a court action. Surely this can have no bearing on the case, except insofar as the introduction of such extrinsic considerations should have made even more urgent a proper hearing and

a scrupulous and fair assessment. Without those safeguards, your own unilateral decision subjects the Faculty Advisory Committee to the suspicion of self-protective responses rather than of proper academic evaluations.

I look forward to hearing from you soon so that we may make a decision on the establishment of a formal committee of enquiry on the University of Victoria grievances. I continue to hope that this will prove unnecessary and that we may resolve our dispute in the spirit of fair play that prevails in the Canadian academic community."

Shortly thereafter three other professors asked the C.A.U.T. to maintain watching briefs in their cases which were then going through the local procedures.

A committee of enquiry was announced on 4 January 1971 composed of Professor D. R. Cherry, Dean of Arts and Science at the University of Saskatchewan at Saskatoon, Professor Evelyn Moore, Chairman of the Faculty Association of the University of Calgary, and Professor Roy E. L. Watson, Chairman of the Department of Anthropology and Sociology at the University of Victoria. This Committee met the appellants, the President, and various other members of the Victoria academic community at hearings on 10, 11, 18 and 19 January. The conclusions of the Committee were:

1. That as soon as possible the department heads concerned, Dean Climenhaga, and President Partridge make known in writing to Dr. Jain, Dr. Goede, and Mr. Graff the recommendations of the departments concerned, of the department heads concerned, of the Faculty Advisory Committee, of the Dean and of the President, and the reasons for all recommendations.

2. That there be established a special tribunal of faculty members, with a member of the Executive of the University of Victoria Faculty Association in attendance as a non-voting participant, to review all the evidence in the cases of Dr. Jain, Dr. Goede, and Mr. Graff, to interview them, and to make final recommendations to the Board of Governors.

3. That if the final recommendation is not to award tenure to Dr. Jain and Dr. Goede, or to promote Mr. Graff, they should be offered appointments for the period July 1, 1971 to June 30, 1972, at salaries which incorporate normal increases for 1971-72.

The report was circulated to all the interested parties for written comment and submitted to the Committee on Academic Freedom and Tenure and to the Executive of C.A.U.T. The Executive considered this report at its meeting on February 27. At the same meeting President Partridge, Assistant Dean Gordon, Professor Harvey and Dean Cherry discussed the report with the Executive. The President and Assistant Dean Gordon, among other matters, stated that this was the first occasion on which they had been clearly informed of the C.A.U.T. position. As a consequence of these discussions the Executive passed the following resolutions and gave the University until 12 March to reply to them:

1. In view of the serious charges levied against Professor Jain and of the lack of opportunity for him to defend himself against them, that the Executive Committee ask that the President of the University of Victoria agree to establish an external tribunal which will recommend

to the Board of Governors whether or not Professor Jain should be granted tenure.

2. In view of the fact that the English Department at the University of Victoria recommended tenure for Professor Goede, a recommendation subsequently accepted by the Faculty Advisory Committee, and that this recommendation was rejected by the President of the University of Victoria on advice of the Dean, but without stated reasons, we request that the President accept the decision of the duly constituted committees to grant tenure to Professor Goede. Alternatively, we request the President to establish an external tribunal which will recommend to the Board of Governors whether or not Professor Goede should be granted tenure.

3. In view of the fact that the unanimous recommendations of the Department of Philosophy for the promotion of Professor Graff were rejected by the President, on the advice of the Dean, without provision of an appeal, the Executive Committee asks that Professor Graff be offered reasons for this decision by the President of the University and a hearing according to the C.A.U.T. Policy Statement, section D.2, which could be fulfilled by a hearing before the Faculty Advisory Committee of the University of Victoria.

4. That the tribunal referred to in the cases of Professor Jain and Professor Goede be composed of one person appointed by the President of the University and one person appointed by the aggrieved party, their appointments to be made within 10 days of the agreement of the President and the aggrieved party to constitute the tribunal. The chairman of the tribunal shall be chosen by agreement of the two persons appointed by the President and the aggrieved party within 10 days from the date on which the second of the two appointees was named. If the two appointees cannot reach agreement on the chairman, the Chief Justice of the Supreme Court of British Columbia shall, within seven days, be asked to appoint the chairman at an early date. The tribunal shall decide the matter referred to it within 21 days unless both parties agree to an extension of time. All members of the tribunal shall be full-time members of a Canadian university faculty.

On 12 March the President replied that he was willing to offer reasons but that there were considerable problems in the creation of tribunals. As a consequence of this reply, of discussions between President Partridge and the President of C.A.U.T. and with one of the members of the Executive of C.A.U.T., it was agreed that C.A.U.T. should make one last attempt to negotiate a settlement. On March 19, the negotiating committee composed of Professor Charles Bourne of the Faculty of Law at the University of British Columbia, Professor Leo Kristjanson, Chairman of the Department of Economics and Political Science at the University of Saskatchewan, and Professor Donald Savage of the Central Office of the C.A.U.T. met with the President and Deans, for a full day at Victoria, without coming to any agreement. President Partridge told the committee that he was opposed to any review of any kind of the three cases.

Throughout these three cases there has been a consistent pattern of action. In the case of Professor Jain, the President, on the advice of the Dean, overruled the Faculty Advisory Committee which had recommended in favour of tenure. In the case of Professor Goede, the President, on the advice of the Dean, overruled the recommendation for tenure of the Department and of the

Faculty Advisory Committee. In the case of Mr. Graff, the President, on the advice of the Dean, overruled the unanimous recommendation of the Department for promotion and consequently caused the non-renewal of Mr. Graff's contract. In all three cases the President refused to offer reasons. He was not bound by the Tenure Document to refuse such reasons since the document was silent on this matter. He chose, therefore, to exercise his discretion in a manner that was directly contrary to the C.A.U.T. Policy Statement. Nor, if he was dissatisfied with the procedures either of the Faculty Advisory Committee or of the departments concerned, did he attempt to create any form of tribunal that might review allegedly defective procedures in these bodies.

The President has just recently agreed to offer his reasons to the three candidates although they still have not been given at the date of writing this report. He thus may meet one condition of the C.A.U.T. Policy Statement, but not the other, namely that there should be an appeal mechanism to hear any rebuttal that the three professors might care to offer. To give reasons without a forum in which there can be fair discussion of the merits of the reasons is to offer a formal rather than a substantive solution. Once again, this is a matter within the President's discretion, and he has chosen to exercise his discretion contrary to the C.A.U.T. Policy Statement. Nor has there merely been a failure to reach agreement on a suitable forum for hearing such reasons and the answers of the professors, since President Partridge explicitly told the C.A.U.T. negotiating team on 19 March that he was opposed to any review of the cases whether internal or external. Nor has the C.A.U.T. received any concrete proposal from President Partridge at the date of writing this report.

As a consequence the Academic Freedom and Tenure Committee recommends to the Executive of the C.A.U.T. that it take every possible step to assure that Professors Jain, Goede and Graff receive a fair hearing according to the C.A.U.T. Policy Statement.

A. E. Malloch, Chairman
Academic Freedom and Tenure Committee

D. C. Savage, Secretary
Academic Freedom and Tenure Committee

31 March 1971

UNIVERSITY OF VICTORIA
VICTORIA, BRITISH COLUMBIA

April 19th, 1971.

Donald Savage,
Associate Executive Secretary,
C.A.U.T.

Dear Dr. Savage:

I would like to comment upon the C.A.U.T. Report on the three cases at the University of Victoria appealed to the Academic Freedom and Tenure Committee.

I would draw your attention to one small error on page 17 where you state towards the end of the last paragraph that Professor Harvey wrote to President Partridge to request arbitration in the cases of Professors Jain and Goede. At that time the Executive of the Faculty Association requested internal arbitration for Professor Jain and requested from President Partridge the information as to whether or not the Board of Governors had met to decide on the granting of tenure to these two professors prior to the end of their final contract year, June 30th, 1971. Subsequently the Executive supported C.A.U.T.'s request for external tribunals in these two cases, as did the whole Association.

The matter of whether or not Professors Goede and Jain received formal notification from the Board prior to the end of their final contract year has never been resolved with President Partridge, since he has consistently refused to answer this question on the grounds that the cases were under appeal.

On the report as a whole, I must say that I consider it to be an extremely fair and accurate one showing responsible and clear reporting on the part of the writers.

Yours sincerely,
Donald Harvey,
President,
Faculty Association.

UNIVERSITY OF VICTORIA RESPONSE TO C.A.U.T. REPORT DATED 31 MARCH 1971

The Chief Justice of the Supreme Court of British Columbia has now been asked by the University of Victoria to nominate a panel of inquiry into certain aspects of recent events on campus.

This proposal came from the full professors of the University who had been asked by the President to act in a consultative capacity. Such an approach had been fully discussed on March 27, 1971, with the President of C.A.U.T. and two others of the Executive. They were sympathetic to the suggestion that the President ask the full professors to review the cases. While the full professors decided not to conduct a review themselves, they did propose this form of inquiry. Yet the threat of censure surprisingly, has remained, even though there has not yet been time for this proposal to be tried.

The Proposal

The full professors worded their proposal very carefully:

"This assembly of full professors of the University of Victoria considers that existing procedures in the three cases under dispute have been conscientiously followed. We feel, nevertheless, if charges of injustice in these cases are brought against the University by C.A.U.T., that careful scrutiny of the situation is in order.

"We therefore recommend to the President and the Board of Governors of the University that a panel of not more than three disinterested persons nominated by the Chief Justice of the Supreme Court of the Province of British Columbia be set up to review the present dispute.

"We wish to emphasize that this review should concern itself with the basic question whether or not natural justice has been done, and that the panel's recommendations not be construed as a usurpation of the autonomy of the President, the Board, or the University. Decisions by the panel would be on an advisory and not on a binding basis. In our view the panel should also address itself to the question whether or not the C.A.U.T.'s handling of the dispute has been satisfactory."

The two main points reflect a care that there should have been no injustice in the cases and a concern about the manner of C.A.U.T.'s intervention.

This proposal differs markedly from the C.A.U.T. recommendations which the University has not found acceptable. The C.A.U.T. wanted a tribunal, composed of persons from outside the University, with one person picked by each party, and a chairman picked jointly, and it wanted the findings to be binding. The University feels that it cannot and should not abrogate its responsibilities to an outside tribunal of this kind. Such visiting committees are difficult to constitute in the first place, and since they do not have to live with the consequences of their recommendations, they are unlikely to be sensitive to all the implications of a case.

The inquiry which is proposed provides for a means to determine whether any individual has suffered real injustice; avoids the disadvantages of C.A.U.T.'s travelling academic committee; does not interfere with this University's right to make its own decisions; and, finally, can be accommodated to the provisions of the Tenure Document.

The Tenure Document

The full professors consider that the University has followed its procedures conscientiously in the cases of Dr. Jain, Dr. Goede, and Mr. Graff. The C.A.U.T. has said exactly the same: "The University had fulfilled the literal requirements of the Tenure Document."

The University essentially rests its case upon a scrupulous observance of the procedures that it was bound to follow, or else be at fault. It maintains too that when this document was negotiated between the Board of Governors and the Faculty Association, it was intended that *ad hoc* procedures and administrative discretion in procedures should be replaced by a tabulated sequence of procedures. Those who negotiated the document chose to omit from this sequence the procedures that C.A.U.T. now advocates in these cases. Therefore, to have gone beyond the letter of the document would have been regarded as a regression to the very methods that the document was devised to replace.

There is in all such processes — whether in the courts or in collective agreements — a beginning and an end, and the integrity of the process depends upon that being recognized. At an agreed point the procedures are complete, and the decision is final; the order of any institution depend upon it.

Nevertheless, in these three cases, the University of Victoria has agreed to an independent investigation of any claims of injustice. It is doing so in a way that is consistent with the integrity of the procedures by which it is properly bound, and which it has observed to the letter.

The C.A.U.T. Argument

The contention of the C.A.U.T. that 'the spirit' of the Document was not followed: is that the University ought to have gone beyond, or outside, the Tenure Document to employ *ad hoc* procedures derived from the C.A.U.T. Guidelines.

One reason why the University stuck to the letter of the document has been given: 'the spirit' of the University, when the document was negotiated, was entirely against such *ad hoc* devices.

Another reason for not following the C.A.U.T. Guidelines is that they do not fit this University's chosen procedures. They are based upon a single committee's recommendation in any particular case, while the University of Victoria's procedures call for committees at both department and faculty levels, and for specifically identified recommendations from the Dean and the President. All of these must be taken into account in the final analysis of the Board of Governors. In addition, there is a University Review Committee to which appeal may be made at any stage.

Besides, had the University wished to incorporate the procedures of the C.A.U.T. Guidelines into its Tenure Document, they were available at the time. It chose not to; it chose, in fact, quite different, but no less fair and much more thorough procedures.

The C.A.U.T. Intervention

The C.A.U.T.'s handling of the cases will presumably be examined by the panel of inquiry; even so it is necessary to note briefly here why this has been unsatisfactory in the university's view.

There have been, in fact, not one, but *two* C.A.U.T. reports in these cases. The first was neither accepted nor released by the C.A.U.T. itself and its early demise was appropriate. It contained many errors of fact and revealed a considerable bias.

The local member of the C.A.U.T. Committee of Enquiry that wrote this report should, in the University's view, have disqualified himself; he had had a negative recommendation upon his own promotion made by one of the committees whose actions he was supposed to judge impartially.

There is also documentary evidence that the C.A.U.T. Committee of Enquiry began to propose its solutions *between* its first and second trips to Victoria; yet it was not until the second trip that it even heard evidence from the University's administration.

Had the C.A.U.T. begun over again from the start, with a new investigating committee that both C.A.U.T. and the University accepted as impartial, it is likely that neither party would be in its present difficulties. Unfortunately, the second report was then written, not by anyone who had investigated on the spot, but by a group working, as it were, at second hand, and this new report concluded with a different set of recommendations.

The Climate on Campus

It was still possible that even then a resolution might have been reached between the University and the C.A.U.T. The parties did meet face to face on three separate occasions, but the quiet of their discussions was not reflected locally. The University's attempts to resolve genuine differences of view took place in an atmosphere calculated to prevent thoughtful resolution. Neither the campus nor the community in Victoria needs to be reminded of the pressures generated locally through leaks of confidential information, press campaigns, mass meetings and other demonstrations, and the involvement of a minority of students generally to disturb the University. There can be little doubt of the intention of some to enforce demands upon the University while it was trying to find considered answers. It is to be hoped that the panel of inquiry will trace the responsibility for a campaign that as much as any other factor brought about the present divisions.

The Three Cases

Two of the cases — those of Dr. Jain and Dr. Goede — involved decisions not to grant tenure.

It is the University's view that the granting of tenure must be seen as a change in relationship from a short-term contract (usually two years) to a permanent commitment. The decision on tenure involves much more than the decision to offer another limited term contract. Consequently, when there are indications of serious doubts and reservations, they must weigh heavily with the University in a tenure decision.

The third case — that of Mr. Graff — would soon have involved tenure, but presented itself at one time as a decision on whether or not he should be promoted, and at another time as a decision on whether or not a senior lectureship

should be created in his department for him. A decision against promotion or against creating the senior lectureship meant that Mr. Graff would not proceed to tenure at the University of Victoria.

In all three cases the faculty member did appeal to the University Review Committee, and in all three cases this committee found no impropriety in the procedures.

All three faculty members were made aware of the reservations that there where about them. Furthermore, the President (by telegram March 12, 1971 to the C.A.U.T. Executive Secretary) offered through C.A.U.T. to give each of the three reasons why he had not received a favorable decision. To date none of the three has accepted the offer.

It is important that "the consistent pattern of action", cited on page 79 of the second C.A.U.T. report should not go unchallenged. Each of the three received at one time or another both favorable and unfavorable recommendations. It would be as unfair of the University to base its case only on the negative recommendations as it is misleading of the C.A.U.T. to emphasize only the positive ones. In each case the President in making the final recommendation to the Board of Governors took into account all the evidence accumulated. What it amounted to in each case was serious doubt and reservation.

In each case the Dean of the Faculty of Arts and Science recommended negatively, taking into account all the prior advice.

In the case of Dr. Jain the tenured members of his department voted 10-1 against tenure for him. The Faculty Advisory Committee — with split votes in both cases — voted first against tenure, and then for tenure.

In the case of Dr. Goede there was an initial abstention by the entire departmental committee on a preliminary assessment, and then one vote for, with seven abstentions. Later, there were positive, though split, votes at both the department and advisory committee levels.

In the case of Mr. Graff the department gave two unanimous and favorable recommendations: the first that he be promoted to the position of senior lecturer, a position which the Dean judged inappropriate for that department; the second that he be promoted to Assistant Professor, a rank for which two successive deans felt Mr. Graff was not qualified. There was no provision under the tenure document for the Dean to receive counsel from the Faculty Advisory Committee on this case, and the Faculty Advisory Committee chose not to consider such cases.

None of the three faculty members received only endorsement or only rejection at every stage. The "consistent pattern" is one of mixed verdicts. In each case the doubts and reservations indicated at one level or another had to be assessed before the making of a commitment about which every university ought to be as careful as is humanly possible.

The University of Victoria has made most careful assessments in these three cases and believes its decisions are consistent with principle, academic standards and fairness to the individual.

Detailed Analysis of C.A.U.T. Report

Page 63, Para. 1, Line 8 —

What is referred to as an *ad hoc* investigating committee under the chairmanship of Professor Cherry was announced to the University as a 'Committee

of Enquiry'. The report of that committee was sent to the University and the University was advised that if it would not accept the recommendations of the report, the report would be published. The University pointed out extensive errors in the report of this Committee of Enquiry. The C.A.U.T. Executive decided that the report should be rewritten.

Page 63, Para. 2, Line 11, and Page 64, Para. 1 —

The fact that the A.F. & T. Committee sees no reason why local documents should be viewed as exhaustive definitions of obligation does not mean that such reasons do not exist. C.A.U.T. has failed to comprehend, or has chosen to ignore, the circumstances and climate of opinion in which the present Tenure Document was negotiated at the University of Victoria. The present document was negotiated in response to a strong desire by the Faculty Association for a detailed and explicit statement of procedures to be used for making appointments, reappointments, and promotion and tenure decisions at the University of Victoria. It was drafted in a climate of reaction against *ad hoc* procedures and against the exercise of administrative discretion.

To the extent that such a document can be said to have 'spirit', the spirit of this document is that administrators should be prevented from exercising discretion as to procedures, and should be required to follow the explicit provisions of the document. In that sense, the administration of the University has observed not only the letter of the document, but also its spirit.

Page 64, Para. 4, Line 9, and Page 65, Para. 1, Line 5 —

The fact that the Dean and President are not required by the document to offer reasons on certain recommendations is a fact of the negotiation of the Tenure Document.

Page 65, Para. 3, Line 7 —

The report states ethat the relationship between Department Committee recommendations and those of the Chairman, and between Faculty Advisory Committee recommendations and those of the Dean, are not precisely defined. This is a strange interpretation of such statements in the Tenure Document as the following quotation from Section 4.4:

> "The Dean or Director shall be obliged to transmit all recommendations and correspondence of the (Faculty Advisory) Committee. While the recommendations of the Committee constitute the Faculty ... recommendations, the Dean ... shall also forward his own recommendations whether they agree or disagree with those of the Committee."

Page 65, Para. 3, Line 13 —

This statement in the report is directly contrary to answers given by the President to the Committee of Enquiry. The report attempts to separate the recommendations from Departmental Committees and Faculty Advisory Committees from those made by Department Heads or Chairmen, and by Deans. The Tenure Document does not make such a division.

The Tenure Document is quite clear in providing that the Departmental Committee shall make its recommendation; the Department Head or Chairman shall forward that recommendation and, if he wishes, his own separate recommendation; the Faculty Advisory Committee decides upon its recommendation, which in turn is forwarded by the Dean, who is required also to forward his personal recommendation. The attempt in the report to separate two of these four steps from the other two is based on a strained interpretation of the Tenure Document.

Page 65, Para. 3, Line 19 —

The authors of the C.A.U.T. report may well believe that recommendations of Department Chairmen and Deans are "supplementary" and that those from Departmental and Faculty Advisory Committees are "paramount". However, the document negotiated by the Faculty Association of the University of Victoria with its Board of Governors does not make this distinction. It is therefore improper to attempt to impose such a distinction on the University.

The remainder of this paragraph, which apparently is a major basis for C.A.U.T. dissatisfaction, is based on this strained and unwarranted interpretation.

Page 65, Para. 3, Line 36 —

The proposal that the President establish "an academic board... for adjudication" is a most startling extrapolation of the University of Victoria Tenure Document. It might be argued that the Tenure Document should provide for such an "academic board" but the fact is that it does not. It is therefore unjust to criticize administrative officers for not having taken such an action, even though C.A.U.T. representatives would prefer that they might have done so.

Page 66, Para. 2, Line 21 —

Again, the C.A.U.T. assertion that the elected University Review Committee and the elected Faculty Advisory Committee should have expanded their respective roles is completely contrary to the spirit and to the letter of the Tenure Document.

Page 66, Para. 3, Line 6 —

The C.A.U.T. report states that Dr. Ryce's letter of June 5 cites "incompatibility". This statement is incorrect; the letter does not use the word nor, according to Dr. Ryce, has it been used in any departmental recommendations concerning Dr. Jain.

Page 66, Para. 3, Line 10 —

The report fails to include other important charges detailed in the letter of August 22, 1969. These charges include: non-cooperation and unyielding attitude in teaching matters, sequestering departmental equipment, complaints from graduate students, questions of professional ethics relating to Dr. Jain's truthfulness and veracity, and the denigration of colleagues. C.A.U.T. had access to several other documents referring to departmental charges, including a letter from Dr. Ryce to Dr. Jain dated December 5, 1969, which includes the statement: "... your professional ethics towards your colleagues and your students are at variance with some of those set out on page 2 of our Tenure Document".

Page 66, Para. 3, Line 13 —

The report refers to Professor Jain's letter of October 27, in which he attempts to respond to the allegations. The report fails to mention Dr. Ryce's letter of December 5, 1969, which refutes paragraph by paragraph the contentions in Dr. Jain's letter of October 27. This is a material omission, and casts further doubt on the objectivity of the A.F. & T. report.

Page 66, Para. 3, Line 19 —

The report attributes motives, yet offers no evidence to support these contentions. In fact, the questions were asked to assure as fair a treatment as possible for Professor Jain.

Page 67, Para. 3, Line 1, and Line 10 —

The authors of this report quote the votes of committees where it suits their purposes; in other instances where it does not, the authors omit this factual information. In this instance the Faculty Advisory Committee first voted against the granting of tenure by a vote of three for, four against; on the second consideration this Committee voted to recommend that tenure be awarded, by a vote of four for and two against.

The Faculty Advisory Committee had elected to it two members of the Chemistry Department. They were excluded when Dr. Jain's case was being considered.

Page 67, Para. 3, Line 18 —

The report glosses over the fact that the Dean invited Professor Jain to meet with him. Professor Jain apparently preferred to exchange memos, and declined the invitation to meet.

Page 68, Para. 2, Line 4 —

The report asserts that Professor Jain "... was denied tenure without being offered reasons for the decisions and without being afforded the opportunity to speak to those reasons before the final decision was made." This statement is false. Professor Jain was supplied with reasons by his Department, including, *inter alia*, a 99-page report. In his lengthy presentation to the University Review Committee, Professor Jain's solicitor commented extensively on the reasons as well as on procedures. A transcript of this presentation was made available to the Faculty Advisory Committee, to the Dean, and to the President.

Page 68, Para. 3, Line 17 —

The report states that "... President Partridge, in reversing the decision of the Faculty Advisory Committee ..." This statement distorts the facts, since President Partridge accepted the academic judgment of the Academic Dean of Arts and Science, which was in complete accord with the judgment of ten of the eleven tenured members of the Department of Chemistry.

Page 69, Para. 1, Line 3 —

Again, the report ignores the very strong reaction which was expressed by the Faculty at the University of Victoria against *ad hoc* procedures, at the time the Tenure Document was negotiated in 1967 and 1968. The detailed procedures so negotiated do not call for, and were in fact designed to prevent, the exercise of administrative discretion as to procedure, such as that proposed by the C.A.U.T. report.

Page 69, Para. 2, Line 16 —

The report betrays its bias in stating that "... only seven members abstained ...". In view of the fact that such wide-spread abstention is unique in the experience of the University of Victoria, the fact that only one of eight members was finally willing to cast a vote rather than abstaining is indeed significant, and it is unreasonable to say that "*only* seven members abstained ..."

Page 69, Para. 2, Line 29 —

The vote of the Departmental Committee was forwarded with a statement which included serious reservations about Dr. Goede's performance.

Page 69, Para. 2, Line 31 —

The report once again selectively fails to record the fact that the recommendation of the Faculty Advisory Committee was by a split vote, rather than being unanimous as is the case with the great majority of its recommendations.

Page 70, Para. 2, Line 3 —

It is not correct to state that Professor Goede was not offered reasons for the decision not to award him tenure. In fact, as the C.A.U.T. Committee of Enquiry was informed, Dr. Leslie met at length with Dr. Goede, explaining his and the Department's reservations about Dr. Goede's performance.

Page 70, Para. 2, Line 5 —

The report again distorts the facts by stating that "... the President took it upon himself to reverse the decision of an elected committee ..." As has been pointed out repeatedly, and as the C.A.U.T. has acknowledged on some occasions, the President concurred in the academic advice of the Dean of Arts and Science, which was based at least in part on the serious reservations which had been expressed by the Departmental Committee, by the Department Head, and by the Faculty Advisory Committee.

Page 70, Para. 3, Line 7 — and footnote —

The report speculates on the opinion of the Department Head. This is remarkable in view of the information which the Department Head gave to the Committee of Enquiry, completely negating the speculation contained in the C.A.U.T. report.

Page 70, Para. 3, Line 15 —

Contrary to the statement of the report, it is the treatment of Professor Goede's case by the C.A.U.T. that constitutes an obvious threat to the working of academic appointment committees of the University of Victoria, inasmuch as arbitrary assessments have been made on assumptions which are not related to the context in which the actual decisions of the committees took place.

Page 70, Para. 4 —

Again C.A.U.T. is suggesting that the President should have exercised administrative discretion to introduce *ad hoc* procedures for the benefit of Dr. Goede. The University response has already pointed out how we believe the introduction of such *ad hoc* procedures would have violated the spirit as well as the letter of the Tenure Document, and would have caused serious criticism on the campus.

Page 71, Para. 12 —

It is true that the Faculty Association Executive has taken the position that the Board of Governors does not have the right to decide upon the criteria it will apply in establishing a position of Senior Lecturer. It is also true that there has been no question that the Board of Governors at the University of Victoria has the right to determine the criteria it will use in considering the establishment of any other position in the University. Therefore the position of the Faculty Association Executive in this regard is inconsistent.

There is a considerable difference between the criteria which the Board will apply in deciding whether to establish a position, and the Terms and Conditions of Employment for Senior Lecturer or, indeed, for any other position. It is, and has been, the University position that Terms and Conditions of

Employment are properly negotiable between representatives of the faculty and the Board of Governors but that criteria for establishment of a position are not subject to such negotiation.

The authors of the C.A.U.T. report have chosen to state the position of the Faculty Association Executive as if it were unchallenged, despite the fact that they had access to documentation which explained the opposite view, which is that held officially by the University.

Page 72, Para. 1, Line 6 —

The report fails to give the full story by means of its selective quotation. The pertinent parts of the Dean's letter read as follows:

> "As I have mentioned to you in conversation, and in my letter of November 28th, I believe the position of Senior Lecturer is to provide for a special need in a department, a need that might be filled by someone with other qualifications than those normally expected from someone in the regular professorial ranks.
>
> "I do not think the position is to be established to accommodate someone who does not meet the qualifications as laid down in the Tenure Document for the normal ranks.
>
> "I have given this matter considerable thought and cannot, in good conscience, recommend a position of Senior Lecturer for your Department."

Page 72, Para. 2, 3 and 4 —

Again the report carefully states one side of an unresolved controversy but fails to state the other side.

Page 72, Para. 5 —

The report refers to four Faculty Association members who assisted in writing of the Tenure Document. There are other Faculty Association members who were equally involved in writing of the Tenure Document, who held and still hold the opposite view.

Page 72, Para. 6 —

The report suggests that the matter of Mr. Graff's doctorate or lack of it was considered by the Dean to be relevant to the Senior Lectureship. This is false. At the time the Dean was interviewing Mr. Graff concerning the position of Senior Lecturer, he understood that Mr. Graff had no intention of completing his Ph.D. This fact was relevant only to the consideration of promotion to Assistant Professor.

Page 73, Para. 9 —

Again the report indulges in selective quotation out of context. In order to understand the letter of August 3, 1970, more should be quoted, as follows:

> "...I accept the recommendation of the Review Committee that the decision concerning promotion or nonpromotion on Mr. Graff be reconsidered in the light of information which he made available to the Review Committee, which he had not made available to the Dean. By copy of this letter I am asking Dean Climenhaga to review such additional facts concerning this case which the Review Committee places at his disposal..."
>
> "Inasmuch as there is apparently considerable difference of opinion as to Mr. Graff's performance and his ability as a teacher, I am asking the

Dean also to investigate such sources as may be appropriate to attempt to ascertain why such marked differences of opinion exist, and to come to an objective and independent judgment on the matter."

Page 74, Para. 2 —

The report states that "there were substantial reasons for the President's decision which he refused to discuss with the Committee because he considered that only procedural matters should be discussed." This is not correct. The President refused to discuss the substance of Mr. Graff's case with the C.A.U.T. Committee of Enquiry because C.A.U.T. guidelines provide that C.A.U.T. investigations shall concern themselves with procedural matters. He specifically did not assert that there were substantial reasons which he would not discuss. This point is an error which appeared in the first report of the Committee of Enquiry and which was rebutted by the University in its response to that report. Nevertheless, the error has reappeared in the present version of the report.

Page 74, Para. 3 and Para. 4 —

The relevance of the Ph.D. for the appointment at the rank of Assistant Professor varies with the Faculty and with the discipline within the Faculty. The report fails to quote Section 3.7 of the Tenure Document where it is stated: "Appointment at the rank of Assistant Professor, Associate Professor and Professor would normally require a Ph.D. or its equivalent achievement. An Assistant Professor should exhibit promise of originality and excellence in some field connected with teaching and writing, research or the creative arts."

Page 75, Para. 3, Line 7 —

The report quotes from the Executive Secretary's letter of March 16, 1970. The quotation cited omits portions of that letter which clearly indicate that the Executive Secretary had already made up his mind, even though he had then only heard Dr. Jain's side of the case and had not sought any information from the University. The passages which indicate prejudgment are:

"We have seen the file of letters from tenured members of the Chemistry Department and do not feel that they constitute evidence of incompatibility . . .

". . . the lack of evidentiary value in the documents presented to Professor Jain, raises grave doubt that any evidence exists."

Page 75, Para. 3, Line 10 —

Again it should be noted that although the Executive Secretary has continually used the term "incompatibility" the Department has not used that term but has referred to violations of professional ethics. C.A.U.T. minimizes the seriousness of the charges and fails to mention the extent of the documentation supporting them.

Page 75, Para. 4, Line 9 —

Consistent with the general pattern, Executive Secretary Berland implies that the President has reversed the decision of the Faculty Advisory Committee.

Page 76, Para. 1, Line 3 —

The report indicates that President Partridge refused to comment in response to Professor Harvey's letter of September 16. On the contrary, the letter of September 30, which is described as a refusal to comment, nearly fills two single-spaced pages, and includes such passages as:

"Your letter also states a substantive conclusion concerning the case. Has Dr. Jain appealed the case to the Faculty Association ? If so, should not the Faculty Association schedule some kind of hearing procedure to ensure that all parties have an opportunity to be heard before the Executive reaches a conclusion ?"

"Further, if Dr. Jain has appealed to the Faculty Association, what is official policy as to whether an appeal to the Faculty Association or an appeal to the C.A.U.T. should be resolved first ?"

"... your response to these questions will make it possible to consider an answer to your substantive proposal that in Dr. Jain's case we disregard the provisions of the Tenure Document relating to tenure decisions, and substitute for them procedures outlined by C.A.U.T. for dismissal actions."

Another letter of September 30 to Professor Harvey points out that it would be improper for the President to comment to a third party, namely the Faculty Association, concerning aspects of the case which had been appealed to C.A.U.T.

Page 77, Para. 5, Line 10 —

The reason given in the letter from the President to Executive Secretary Berland for rejecting *ad hoc* procedures for Dr. Goede (not for "the professors" as indicated in the report) was:

"The University of Victoria certainly concurs with your position that it is perfectly appropriate for the C.A.U.T. to suggest changes in procedures which have been negotiated at a University. However, we seriously question the propriety, the wisdom, and the equity of your suggestion that a procedure be instituted for the benefit of a single faculty member, which was not available to all other faculty members here."

Page 78, Para. 4 —

C.A.U.T. did not follow its own procedures in establishing the Committee of Enquiry. In particular, it rejected the formal request of the University that one of the members proposed be disqualified because of previous personal involvements.

Page 78, Para. 4, final sentence, and Paras. 5, 6, and 7 —

It should be noted that the "conclusions" of the Committee of Enquiry are not conclusions but were recommendations to the University. The report of the Committee did not contain any conclusions. Furthermore, if the Committee of Enquiry was an investigating body, it should have confined itself to investigating; instead, the report appears designed to support recommendations based on conclusions it had already reached. It should also be noted that the letter of February 3, 1971, from Executive Secretary Berland which conveyed a copy of that report contained the following:

"It is our earnest wish that you and the Board of Governors will agree to implement the recommendations of the Committee of Enquiry. In that event, the report would remain a confidential document and would have no further circulation. Failing such implementation, the report will be issued publicly, circulated to all Faculty Associations in Canadian Universities, and published in the C.A.U.T. *Bulletin*. The Committee on Academic Freedom and Tenure will then consider other recommendations which it wishes to make on the University of Victoria grievances to the Executive Committee and Council of C.A.U.T."

At its meeting on February 27 we are told the Executive did not adopt the report of the Committee of Enquiry. Nevertheless, while rejecting the report

which supposedly formed the basis of the recommendations, it adopted recommendations which are repeated in the present report.

There seems little equity in any procedure under which demands are made upon a university by C.A.U.T., before C.A.U.T. has even agreed upon a report which is designed to support those recommendations.

Page 79, Para. 5 —

The report omits reference to a joint statement agreed upon by the negotiating committee and the Deans and President of the University at the conclusion of the meeting on March 19, 1971. An important excerpt follows:

> "*Both parties agreed* that in these cases *the University had fulfilled the requirements of the Tenure Document* which had been negotiated in 1968 between the University of Victoria Board of Governors and the Faculty Association. However, it is the C.A.U.T. view that where local procedures do not specifically preclude the use of C.A.U.T. procedures then discretionary powers should be exercised according to these procedures."
>
> (emphasis supplied)

Page 79, Para. 6 —

The paragraph would be more accurate if it stated that, in the case of Dr. Jain, the President accepted the recommendation of the Dean and the Departmental Committee, rather than the recommendation of the Faculty Advisory Committee which had been made on a split vote; that in the case of Dr. Goede, the President accepted the recommendation of the Dean which reflected serious reservations expressed both by Faculty Advisory Committee and the Departmental Committee, and that in the case of Mr. Graff, the President accepted the recommendation of the Dean rather than that of the Departmental Committee.

26 April 1971

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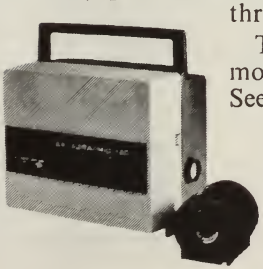

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